FILE
DEC 20
MICHAEL RODAK, J

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-962

In The Matter Of EDWARD JOHN KAZUBOWSKI, Bankrupt,
(P-BK-71-782)

ANNA A. PHELPS,
Petitioner,

vs.

STEPHEN J. COVEY, Referee in Bankruptcy, United States District Court for the Southern District of Illinois, Northern Division, MAX J. LIPKIN, Assistant United States Attorney for the United States District Court for the Southern District of Illinois, Northern Division, and the UNITED STATES OF AMERICA,
Resondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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(An Attorney at Law admitted to the Roll of Attorneys in the United States District Court for the Southern District of Illinois on June 21, 1955).

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In The Matter Of EDWARD JOHN KAZUBOWSKI, Bankrupt,
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STEPHEN J. COVEY, Referee in Bankruptcy, United States District Court for the Southern District of Illinois, Northern Division, MAX J. LIPKIN, Assistant United States Attorney for the United States District Court for the Southern District, Northern Division, and the UNITED STATES OF AMERICA,
Resondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner Anna A. Phelps prays that a writ of certiorari issue to review the *sua sponte* decision of the United States Court of Appeals For the Seventh Circuit issued on September 20, 1973, from all that part of Appeal No. 72-1800 under an Act of Congress relating to Bankruptcy, denying petitioner equal access to the Court and of an opportunity to be heard upon appeal, and depriving petitioner of First and Fifth Amendment Federal Constitutional rights.

OPINIONS BELOW.

The *sua sponte* decision of the United States Court of Appeals For the Seventh Circuit dated September 20, 1973 is unreported and appears as App. A.

The *sua sponte* "decision and order on Referee's petition" of the United States District Court For the Southern District of Illinois, Northern Division, issued in camera on July 24, 1972, is unreported and appears as App. B.

The "Petition" of the Referee In Bankruptcy, shown filed on May 31, 1972 with the clerk of the district court and *after* petitioner filed timely petition for review on May 30, 1972 from the *sua sponte* order of the Referee to show cause against petitioner, from the overruling and denial of the Response filed thereto, and from the oral announcements and findings of the Referee on May 19, 1972, appears as App. C.

The *sua sponte* order to show cause against petitioner, issued in camera on May 15, 1972 by the Referee In Bankruptcy, appears as App. D.

JURISDICTION.

This action arises out of bankruptcy proceedings pending in the United States District Court For the Southern District of Illinois, Northern Division, Case No. P-BK-71-782, In Bankruptcy, entitled: *"In the Matter of Edward John Kazubowski, Bankrupt"*.

The *sua sponte* decision of the Court of Appeals was issued on September 20, 1973.

No petition for rehearing was filed because "No Hearing" was afforded to petitioner.

On October 4, 1973, petitioner filed a *"Motion To Vacate the Sua Sponte Decision Shown Entered on September 20, 1973, Denying Appellant Equal Access to the Court, Denying and Depriving Appellant of First and Fifth Amendment Federal Constitutional Rights, Tainted With Fraud Pursuant To The Calculated, Well Planned Scheme To Defeat, Impair and Obstruct Justice and With Refusal To Exercise Judicial Function With Abnegation of Judicial Duty Under An Act of Congress Relating to Bankruptcy"*, which appears as App. E.

No ruling has been made upon the said Motion.

On October 10, 1973, petitioner filed *Motion For Stay of Mandate Pending Filing of A Petition For Writ of Certiorari To The Supreme Court of The United States*, which appears as App. F.

On October 16, 1973 the Court of Appeals entered an order denying the Motion For Stay of Mandate, which appears as App. G.

On October 19, 1973, the Court of Appeals issued a subsequent *sua sponte* order with false recital of a denial of "the petition for rehearing", which appears as App. H.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

In addition, this Court has power under 28 U.S.C. § 1651(a) and § 2106 to review the *sua sponte* decision of the Court of Appeals and the subsequent *sua sponte* order issued on October 19, 1973, with false recital of the denial of "the petition for rehearing", when petitioner's statutory right to file a petition for rehearing was

defeated and obstructed by the issuance of the *sua sponte* decision on September 20, 1973.

Moreover, this Court has power to review the application of the Bankruptcy rules and the practice and procedure under the Bankruptcy Act as set forth in 28 U.S.C.A. § 2075.

The *sua sponte* decision issued on September 20, 1973, denying petitioner equal access to the court and of First and Fifth Amendment Federal Constitutional rights, is, nonetheless, in direct conflict with the opinion rendered by the said Court of Appeals in *In re Fisher,* 179 F.2d 361 (C.A. 7th 1950), and in direct conflict with the ruling held by the said Court of Appeals in *In re Acme Furnace Fitting Co., Inc.,* 302 F.2d 318, 320 (C.A. 7th 1962).

QUESTIONS PRESENTED.

The questions presented upon this petition for writ of certiorari have not been passed upon by this Court.

1. Whether the *sua sponte* decision issued by the court of appeals denying petitioner equal access to the court and depriving petitioner of First and Fifth Amendment Federal Constitutional rights to prevent unearthing of the fraud and conspiracy upon the supersedeas and additional supersedeas appeal bonds of the bankrupt, and to prevent unearthing of the calculated omissions of statutory duties imposed upon the Referee and upon the Trustee as unequivocally written by Congress under Section 47 and Section 70, sub. f of the Act, (11 U.S.C.A. § 75 and § 110(f)), and Order 17 of the General Orders in Bankruptcy, offends First, Fifth and Fourteenth Amendment Federal Constitutional rights and unconstitutional as applied to petitioner and to the bankruptcy estate.

2. Whether the *sua sponte* decision issued by the court of appeals denying petitioner equal access to the court and depriving petitioner of First and Fifth Amendment Federal Constitutional rights is in furtherance of the scheme and plan to conceal the "conflict of interests" of the Referee, the Trustee and District Judge with the bankrupt's estate by misuse and abuse of local Rule 21 of the Rules in Bankruptcy for the said District Court, and abrogates the right granted by Congress under 11 U.S.C.A. § 67(c) and § 67(a)(8) to seek judicial review of the Referee's orders as unequivocally written by Congress, and unconstitutional as applied to petitioner.

3. Whether the citations of two cases in the *sua sponte* decision of the Court of Appeals were calculated to be misleading and deceiving in that neither of the two cases cited involve the jurisdiction of the Bankruptcy court or Rule 21 of the Rules in Bankruptcy For the United States District Court For the Southern District of Illinois nor involve similar factual circumstances and when the said *sua sponte* decision was, nonetheless, issued in direct conflict with the opinion rendered by the said Court of Appeals in *In re Fisher,* 179 F.2d 361 (C.A. 7th 1950) and in direct conflict with the ruling held by the said Court of Appeals in *In re Acme Furnace Fitting Co., Inc.,* 302 F.2d 318 (C.A. 7th 1962) and therefore, the *sua sponte* decision unconstitutional as applied to petitioner;

4. Whether the *sua sponte* decision issued by the Court of Appeals strikes down Rule 34(a) and Rule 40 (a) of the Federal Rules of Appellate Procedure to defeat and obstruct petitioner's right to a review upon appeal, of an opportunity to be heard upon appeal, and to deny petitioner equal access to the court, and to deprive petitioner of First and Fifth Amendment Federal Constitutional rights in furtherance of the fraud and conspiracy upon

the supersedeas and additional supersedeas appeal bonds of the bankrupt and unconstitutional as applied to petitioner;

5. Whether the subsequent *sua sponte* order issued by the Court of Appeals on October 19, 1973 with recital of a denial of "The Petition For Rehearing" was false and fraudulent when issued so as to defeat and obstruct the real issues presented upon appeal and to create a "procedural maze", and repugnant to procedural due process of law secured by the Due Process Clause of the Fifth Amendment to the United States Constitution and unconstitutional as applied to petitioner.

6. Whether the *sua sponte* decision of the Court of Appeals and the subsequent *sua sponte* order issued on October 19, 1973 constitutes both an abuse of power under the jurisdiction conferred by Congress under the Bankruptcy Act and an Abnegation of judicial duty with a refusal to adhere to Article VI, Clause 2 of the United States Constitution, and unconstitutional as applied to petitioner;

7. Whether the postponement of petitioner's said appeal No. 72-1800 to preference of 135 cases docketed subsequent to petitioner's said appeal and in which 135 cases oral arguments were set and heard by the Court of Appeals, was in furtherance of the conspiracy to defraud the United States under the Bankruptcy Act so as to afford opportunity to co-conspirators to achieve the ultimate objects of the conspiracy upon the supersedeas and additional supersedeas appeal bonds of the bankrupt making the *sua sponte* decision violative of First Amendment Federal Constitutional rights, and violative of procedural due process of law secured by the Due Process Clause of the Fifth Amendment to the United States Constitution and unconstitutional as applied to petitioner.

CONSTITUTIONAL PROVISIONS INVOLVED.

Article VI, Clause 2 of the United States Constitution is set forth in App. I, infra, p. 42a.

The First Amendment to the United States Constitution is set forth in App. I, infra, p. 42a.

The Fifth Amendment to the United States Constitution is set forth in App. I, infra, p. 42a.

STATUTES INVOLVED.

United States Code:

11 U.S.C.A. § 11(a)(17), (Section 2a(17) of the Bankruptcy Act) is set forth in App. J, infra, p. 43a.

11 U.S.C.A. §67(a)(8) and §67(c), (Section 39a(8) and Section 39c of the Bankruptcy Act) is set forth in App. J, infra, pp. 43a-44a.

11 U.S.C.A. § 75 (Section 47 of the Bankruptcy Act) is set forth in App. J, infra, pp. 45a-46a.

RULES INVOLVED.

Rule 21 of the Rules in Bankruptcy For the United States District Court For the Southern District of Illinois, is set forth in App. K, infra, p. 48a.

Rule 34(a) and Rule 40(a) of the Federal Rules of Appellate Procedure are set forth in App. K, infra, pp. 48a-49a.

GENERAL ORDERS IN BANKRUPTCY INVOLVED.

Order 17(1), (2) and (3) is set forth in App. L, infra, 28 U.S.C.A. p. 50a.

RELEVANT FACTS AS TO APPEAL NO. 73-1183 CONSOLIDATED WITH APPEAL NO. 72-1800 IN THE SUA SPONTE DECISION ISSUED ON SEPTEMBER 20, 1973 BY THE COURT OF APPEALS "AFFIRMING THE JUDGMENT APPEALED FROM".

Notice of Appeal To the Supreme Court of the United States from the *sua sponte* decision issued on September 20, 1973, in petitioner's appeal No. 73-1183, was filed in the Court of Appeals on October 10, 1973, and docketed in this Court on December 7, 1973 as No. 73-897.

STATEMENT OF THE CASE.

The exceptional and unusual circumstances involved in the Bankruptcy Estate of Edward John Kazubowski requires a more detailed statement of facts for an understanding of the procedural maze created from the outset of the proceedings by the refusal, failure and neglect of the Referee and of the Trustee to perform statutory duties as unequivocally written by Congress, and the misuse of the Bankruptcy Court and the Bankruptcy Law for extortion of money and other properties by Attorney Charles A. Covey, and brother of the Referee, Stephen J. Covey.

The bankruptcy estate involves a final, divisible decree of divorce awarded to Betty Dolar Kazubowski from Edward John Kazubowski, the bankrupt, entered by a judicial decree dated and filed on June 13, 1966 in the Circuit Court of Henry County, 14th Judicial Circuit of Illinois, Case No. 65-D-1240, entitled: *"Betty Dolar Kazubowski, plaintiff, vs. Edward J. Kazubowski, defendant"*.

By its decree, the court restored the maiden name of Betty Dolar Kazubowski to Betty Dolar.

This bankruptcy estate further involves a separate property "stipulation settlement decree entered on August 31, 1966 in the said Circuit Court of Henry County, Illinois, more than 30 days after the divisible decree of divorce had become final and not reviewable upon appeal and not permitted upon appeal by the trial court.

The property settlement decree had for its sole basis a document entitled "stipulation", signed by Gregg A. Young, as Attorney For Betty Dolar Kazubowski, and signed by a person, or persons, as "Perona & Perona, as Attorneys for Edward J. Kazubowski", but not authorized by Edward J. Kazubowski, but held binding upon both parties in *Kazubowski* v. *Kazubowski,* 45 Ill.2d 405 (1970).

The bankruptcy estate further involves repeated and continuous violations and defiance of a $25,000.00 supersedeas appeal bond, violations and defiance of the New Supersedeas and Appeal Bond, and, violations and defiance of the Additional $5,000.00 supersedeas appeal bond, and violations and defiance of the Additional $20,000.00 supersedeas appeal bond, by the divorced Betty Dolar, the named appellee on the said supersedeas and additional supersedeas appeal bonds whereon the bankrupt is the principal.

The bankruptcy estate further involves a transfer and conveyance of the real estate described in the petition of bankruptcy, by Betty Dolar to the secretary of one of her attorneys, and the immediate reconveyance of the same described real estate by the secretary of Attorney Gregg A. Young to Betty Dolar, in violation of the terms and conditions of the property "stipulation" settlement decree and in violation and defiance of the supersedeas appeal bonds of Edward John Kazubowski, bankrupt.

The reviewing courts of the State of Illinois refused to make a ruling or determination upon the orders procured and acts and proceedings taken by Betty Dolar in violations and defiance of the said supersedeas and additional supersedeas appeal bonds of Edward John Kazubowski, now the bankrupt.

The supersedeas and additional supersedeas appeal bonds stayed no proceedings and served no benefit to Edward John Kazubowski, bankrupt. No remedy for relief was afforded to Edward John Kazubowski, bankrupt, in the courts of the State of Illinois. No remedy for relief was afforded to the sureties and co-sureties, Margaret Gilio, Clarence Boling and Helen Boling, from the separate action commenced by Betty Dolar against said named sureties and co-sureties to recover $50,000.00 on the supersedeas and additional supersedeas appeal bonds of Edward John Kazubowski. but to the contrary, the said named sureties and co-sureties were forced to give additional $40,000.00 supersedeas appeal bonds upon appeal from the *sua sponte* order entered *in camera* awarding judgment to Betty Dolar upon orders procured and acts and proceedings taken in violations and defiance of the prior $50,000.00 supersedeas and additional supersedeas appeal bonds of Edward John Kazubowski, now the bankrupt. The additional $40,000.00 supersedeas appeal bonds stayed no proceedings.

Monies and other properties in excess of the requirements specified in the said property "stipulation" settlement decree had been extracted, seized and confiscated from the bankrupt, from members of the bankrupt's family and from the sureties and co-sureties, Margaret Gilio, Clarence Boling and Helen Boling, prior to the filing of the petition of bankruptcy.

Attorney Charles A. Covey, and brother of the Referee In Bankruptcy, Stephen J. Covey, induced members of the bankrupt's family to pay $155.00 for preparation and filing of a petition of voluntary bankruptcy for Edward John Kazubowski so as to obtain a remedy in the Federal Court, to recover assets belonging to the bankruptcy estate, and to obtain the liberty of the bankrupt.

At the time of filing the petition of bankrupt on December 3, 1971, Edward John Kazubowski had been serving unlawful consecutive sentences of 8 months unless $28,000.00 paid by members of his family for the purchase of the release of Edward John Kazubowski.

After filing of the petition of bankruptcy, Attorney Charles A. Covey entered into an illicit combination with William H. Christison, Betty Dolar and her attorneys, Gregg A. Young, Campbell Andrews and Harper Andrews, to continue the scheme for extortion of monies and other properties for the purchase of the liberty of the bankrupt; to extract further sums of monies from the sureties-co-sureties, Margaret Gilio, Clarence Boling and Helen Boling; to procure a fraudulent award of money as a non-dischargeable debt by solicitation of a created claim and petition from Julia Chinlund, Executor of the Estate of John J. Angielczyk, a deceased co-surety; to procure a fraudulent award of money as a non-dischargeable debt upon orders falsely procured by Betty Dolar, and her said attorneys, in violation and defiance of the supersedeas and additional supersedeas appeal bonds of the bankrupt, and against public policy and morals; to falsely procure all of the assets of the estate, to increase the burdens of the bankrupt and to defraud bonafide creditors of the just share to be received.

Pursuant to the scheme and on December 10, 1971, Attorney Charles A. Covey, by retaining "private process

server" to make "service upon the Sheriff of Henry County, Illinois, had the bankrupt brought into the bankruptcy Court before Gregg A. Young, Campbell Andrews and Harper Andrews, attorneys for Betty Dolar, and before his brother, the Referee In Bankruptcy, to intimidate, threaten and harass the bankrupt to enter into an unlawful agreement for payment of money under the guise of "alimony" and "attorneys' fees" for the purchase of the liberty of the bankrupt.

On December 21, 1971, the bankrupt was again brought into the bankruptcy court for the First Meeting of Creditors. The Referee conducted a limited examination of the bankrupt, suppressing and concealing the true cause of the financial destruction of the bankrupt, and thereafter appointed William H. Christison as Trustee.

William H. Christison nominated himself as Attorney for himself in his capacity as Trustee, approved by the Referee.

The Trustee refused and neglected to prepare and file a complete inventory of all the property of the bankrupt and a correct appraisal.

The Referee refused and neglected to appoint a duly qualified appraiser.

Attorney Charles A. Covey sought to extort $10,000.00 from members of the bankrupt's family for the purchase of the liberty of the bankrupt for "Christmas", and thereafter sought to have members of the bankrupt's family forego filings of any claims against the estate so that all of the assets could go to Betty Dolar and her attorneys for the purchase of the liberty of the bankrupt.

The created and false claim of $25,000.00, under the $25,000.00 supersedeas appeal bond and petition for non-dischargeability, solicited by Attorney Charles A. Covey

and William H. Christison, Trustee, from Julia Chinlund, Executor Of The Estate Of John J. Angielczyk, a deceased co-surety, was filed against the bankrupt's estate on February 2, 1972.

Neither petitioner, as a creditor and party in interest, or the creditors-sureties and co-sureties, Margaret Gilio, Clarence Boling and Helen Boling, or other creditors and parties in interest, were permitted to defend against the false claim and petition of the Executor, Julia Chinlund, or against the false claim, or joint claim, thereafter filed by Betty Dolar, Gregg A. Young, Campbell Andrews and Harper Andrews.

On February 23, 1972, after release of more than 7½ months service of unlawful consecutive service of 8 months, in maximum security, the bankrupt discharged Attorney Charles A. Covey, and brother of the Referee, Stephen J. Covey.

The Referee, having ordered the bankrupt to file Motion or Answer to the "debt due" the Executor, Julia Chinlund, petitioner thereafter served as of counsel to the bankrupt in preparing Answer of the Bankrupt to the "debt due" the Executor, Julia Chinlund.

On April 27, 1972, the Executor, Julia Chinlund, refused to appear for the hearing to make proof of her created claim of $25,000.00 or any part thereof. No hearing was permitted to the bankrupt and his witnesses.

The Referee refused to reject or to dismiss the false claim, and refused and failed to report the false claim of the Executor, Julia Chinlund, to the United States Attorney.

The Trustee refused and failed to file objections to the false claim of the Executor, Julia Chinlund.

On May 8, 1972, the creditor, surety and co-surety, Margaret Gilio, and creditors, co-cureties, Clarence Boling and Helen Boling filed their respective Petitions For Removal of TRUSTEE, WILLIAM H. CHRISTISON.

On May 10, 1972, the bankrupt filed his petition for removal of TRUSTEE, WILLIAM H. CHRISTISON.

No hearings have ever been held on the petitions for removal of TRUSTEE, WILLIAM H. CHRISTISON. No date has ever been set for hearing on the said petitions for removal of TRUSTEE, WILLIAM H. CHRISTISON.

Petitioner thereafter, as a creditor, filed a petition for removal of TRUSTEE, WILLIAM H. CHRISTISON.

On May 16, 1972, petitioner was served with a copy of a *sua sponte* Order To Show cause on May 19, 1972 at 2:30 P.M. The Order To Show Cause was entered in camera on May 15, 1972 by the Referee, upon oral motion made before himself, ruling in favor of himself, to enter the Order To Show Cause against this petitioner "why she should not be removed from the list of attorneys authorized to practice law in the U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS for the reason that she has violated Rule 21 of the Rules in Bankruptcy for the U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS in that she has acted as attorney for two creditors, to wit, Margaret Gilio and Clarence and Helen Boling, while at the same time acting as attorney for the bankrupt. Said Rule 21 is as follows:

> Rule 21—Conflict Of Interest
>
> An attorney who represents a creditor, either generally or on a specific case basis, may not represent a bankrupt who is indebted to said creditor."

A copy of the *sua sponte* order to show cause is App. D.

On May 15, 1972, the REFEREE made further oral motions in camera, before himself, ruling in favor of himself, to enter orders against Margaret Gilio, Clarence Boling and Helen Boling to appear before himself, the Referee, on May 19, 1972 at 2:30 P.M., copies of which orders are App. M and App. N.

Prior to any hearing on May 19, 1972 petitioner (respondent therein) filed a response to the May 15, 1972 order to show cause, denying the jurisdiction conferred upon the Referee under the Bankruptcy Act to enter a *sua sponte* order to show cause upon his own motion made before himself, ruling in favor of himself to enter the order to show cause against petitioner, or to disbar petitioner, and set forth, *inter alia,* the "conflict of interests" of the Referee and of the Trustee with the bankrupt's estate; the direct interest, personal interest, monetary interest or otherwise of the Referee in this estate; the corrupt administering and procuring of the continued corrupt administering of the bankruptcy Law in this estate from the outset; overt acts, and the scheme and design to extort money and other properties by Attorney Charles A. Covey in the illicit combination with Betty Dolar and her said Attorneys for the purchase of the liberty of the bankrupt; the created claim and petition solicited by Attorney Charles A. Covey and the Trustee, William H. Christison, from the Executor, Julia Chinlund; the refusal and failure of the Referee to report the created and false claim and petition of the Executor, Julia Chinlund, to the United States Attorney; the refusal of the Trustee to file objections to the false claim of the Executor, Julia Chinlund; the continuing fraud and conspiracy upon the supersedeas and additional supersedeas appeal bonds of the bankrupt, the monies and other properties extracted, seized and confiscated from the bankrupt, from members of the bank-

rupt's family and from the sureties and co-sureties, Margaret Gilio, Clarence W. Boling and Helen Boling, by Betty Dolar, in the repeated violations and defiance of the supersedeas and additional supersedeas appeal bonds of the bankrupt, and the scheme and design to deprive the bankrupt of counsel who resists created claims filed against the estate, and to prevent and prohibit common defenses asserted by the bankrupt and the said named sureties and co-sureties.

On May 19, 1972, the Referee overruled and denied the said Response and conducted a hearing before himself, by himself, ruling in favor of himself upon all objections, having an armed person in the room usually occupied as the court room for this specific occasion.

Upon conclusion of the "hearing", the Referee announced his findings and conclusions that this petitioner represented "conflicting interests" of Margaret Gilio, Clarence Boling and Helen Boling with the bankrupt and violated Rule 21 of the Rules in Bankruptcy For the United States Court For the Southern District of Illinois, and instructed his court reporter to prepare a transcript of the proceedings and upon completion he, the Referee, would enter his order that this petitioner be barred from the court.

The Trustee did not appear for the "hearing".

Pursuant to §67(c) of Title 11 U.S.C.A., (Section 39c of the Act), petitioner filed timely petition for review on May 30, 1972, from the May 15, 1972 Order To Show Cause, from the overruling and denial of the Response, and from the conclusions and findings announced by the Referee after "hearing" on May 19, 1972.

Thereafter, on May 30, 1972, petitioner filed Affidavit of Bias and prejudice of the district judge.

The REFEREE refused and failed to perform the statutory duties under §67(a)(8) of Title 11 U.S.C.A., (Section 39a(8) of the Act).

On June 5, 1972, petitioner received a copy of a "Petition" of the REFEREE, shown filed May 31, 1972 with the clerk of the district court, recommending that petitioner's name be removed from the list of attorneys authorized to practice law in the said district court, which of course, includes the Bankruptcy court.

On May 31, 1972, the REFEREE also filed a document merely certifying to certain pleadings, including the Petitions for Removal of the TRUSTEE as filed by creditors-sureties and co-sureties, Margaret Gilio, Clarence Boling and Helen Boling, and including petitioner's said petition for review, theretofore filed on May 30, 1972, which appears as App. O.

On June 30, 1972, the district judge issued a *sua sponte* order in camera, refusing to disqualify himself upon the Affidavit of Bias and Prejudice, and further ordered that petitioner "may file her response to the Petition of Referee Covey within ten days".

Petitioner filed Response to the said "Petition" of the Referee, denying the jurisdiction of the Referee conferred under the Bankruptcy Act to conduct the said proceedings before himself to issue a *sua sponte* order to show cause, and alleged, *inter alia,* the conflict of interests of the Referee and of the Trustee with the bankrupt's estate, and the unconstitutionality of said local Rule 21 of the Rules in Bankruptcy for the District Court.

No hearing was set by the district judge. On July 17, 1972, petitioner filed Notice of Existence of Constitutional Questions as to Acts of Congress under 28 U.S.C. § 2403 drawing into question, *inter alia,* Rule 21 of the Rules in Bankruptcy for the said District Court as unconstitu-

tional on its face and/or as applied to petitioner, and the unconstitutional application of, *inter alia*, Section 39 a(8), b and c of the Bankruptcy Act, (11 U.S.C. §67 (a)(8), (b) and (c)), and Title 18 U.S.C. §152, §154 and §371.

On July 24, 1972, the district judge entered a *sua sponte* "Decision and Order on Referee's Petition", in camera, summarily disbarring petitioner for an indefinite period of time.

On August 14, 1972, petitioner filed a "Motion To Vacate 'Decision and Order on Referee's Petition'", pursuant to Rule 60(b)(3), (4) and (6) of the Federal Rules of Civil Procedure, with Affidavit in support.

No hearing was set by the district judge. No pleadings were filed by the Referee or the Assistant United States Attorney for the District.

On August 22, 1972, petitioner filed Notice of Appeal from the "Decision and order on Referee's Petition", summarily disbarring petitioner.

On November 13, 1972, petitioner commenced an original action in the Court of Appeals for a writ of mandamus or prohibition to direct the district judge to vacate the *sua sponte* order of July 24, 1972, summarily disbarring petitioner, and to prevent the judge from further proceedings in the civil action commenced in the district court against the Referee, (to perform a duty owed to petitioner (plaintiff therein) pursuant to 11 U.S.C. § 67 (a)(8)), and to prevent the judge from further proceedings in the bankruptcy case concerning this petitioner, denied on December 4, 1972.

The docket entries in the court of appeals disclose that Max J. Lipkin, Assistant United States Attorney for the district, entered an appearance for the Referee on October 18, 1972.

Neither the Referee nor the Assistant United States Attorney for the district filed an appellee's brief.

Petitioner did not at any time waive any right to oral argument, or file any motion for consolidation of appeals.

The Court of Appeals subjected petitioner's said appeal No. 72-1800 to postponement and preference of 135 cases docketed *subsequent* to petitioner's said appeal, and which 135 cases not entitled to preference, oral arguments were set for the April and September Sessions and oral arguments heard.

On September 20, 1973, the Court of Appeals issued the *sua sponte* decision, consolidating appeals No. 72-1800 and No. 73-1183.

On October 4, 1973, petitioner filed Motion to vacate the *sua sponte* decision entered in said appeal No. 72-1800. No ruling has been made upon this motion.

On October 4, 1973, petitioner received Notice from the clerk of the District Court of a "HEARING ON DISBARMENT OF ANNA A. PHELPS", set for October 31, 1973, which appears as App. P.

On October 10, 1973, petitioner filed in the Court of Appeals a Motion For Stay of Mandate pending filing of a petition for writ of certiorari to this Court, denied on October 16, 1973.

On October 19, 1973, the Court of Appeals issued the subsequent *sua sponte* order with false recital of a denial of "the petition for rehearing".

On November 5, 1973, Notice was served by a deputy clerk of the Court of Appeals that the mandate and original record was returned to the United States District Court at Springfield, Illinois.

REASONS FOR GRANTING THE WRIT.

The questions presented upon this petition for writ of certiorari have not been passed upon by this Court.

This bankruptcy litigation involves violations from the outset of the Bankruptcy Law as unequivocally written by Congress; wrongful withholdings of procedural due process of law; the constitutionality of Rule 21 of the Rules in Bankruptcy for the United States District Court for the Southern District of Illinois; the conflict of interests of the Referee, the Trustee and District Judge with the bankrupt's estate; the misuse and abuse of the Bankruptcy Court and of the Bankruptcy Law for extortion of money and other properties, and a conspiracy to defraud the United States under an Act of Congress relating to Bankrupt.

Seeking judicial review of the Referee's order is a recurring problem.

The proceedings in this bankruptcy estate is of public interest and involves the integrity of the court itself.

This Court's jurisdiction is plenary under an Act of Congress relating to Bankruptcy.

The *sua sponte* decision of the Court of Appeals denying petitioner equal access to the court and of an opportunity to be heard upon appeal is, nonetheless, in direct conflict with the opinion rendered in *In re Fisher*, 179 F.2d 361 (C.A. 7th 1950), and in direct conflict with the ruling held in *In re Acme Furnace Fitting Co., Inc.*, 302 F.2d 318, 320 (C.A. 7th 1962).

The *sua sponte* decision strikes down 28 U.S.C.A. § 2075, strikes down 11 U.S.C.A. § 67(a)(8), § 67(c), § 75, § 110(f),

Order 17 (1), (2), (3), of the General Orders In Bankruptcy, Rule 34(a) and Rule 40(a) of the Federal Rules of Appellate Procedure.

I.

The Sua Sponte Decision Issued By The Court Of Appeals Denying Petitioner Equal Access To The Court And Depriving Petitioner Of First And Fifth Amendment Federal Constitutional Rights To Prevent Unearthing Of The Fraud And Conspiracy Upon The Supersedeas And Additional Supersedeas Appeal Bonds Of The Bankrupt, And To Prevent Unearthing Of The Calculated Omissions Of Statutory Duties Imposed Upon The Referee And Upon The Trustee As Unequivocally Written By Congress Under Section 47 and Section 70 Sub. f Of The Act, (11 U.S.C.A. §75 And §110(f)), And Order 17 Of The General Orders In Bankruptcy, Offends First, Fifth And Fourteenth Amendment Federal Constitutional Rights And Unconstitutional As Applied To Petitioner, And To The Bankruptcy Estate.

The refusal of the reviewing courts of the State of Illinois to make a determination or ruling upon the orders falsely procured, and of the acts and proceedings taken by the divorced Betty Dolar and her attorneys, Gregg A. Young, Campbell Andrews and Harper Andrews, in repeated and continuous violations and defiance of the supersedeas and additional supersedeas appeal bonds of the bankrupt for more than 5½ years in the courts of the State of Illinois, created a situation for co-conspirators to retain the "fruits of the fraud"; to extract further sums of money under the said supersedeas and additional supersedeas appeal bonds from the sureties, co-sureties and creditors, Margaret Gilio, Clarence Boling and Helen Boling, after the filing of the petition of bankruptcy by Attorney Charles A. Covey; to extract all of the assets of the bankruptcy estate; to increase the burdens of the bankrupt, and to deprive bonafide creditors

and parties in interest of the just share to be received from the estate.

Pursuant to the scheme and design, the bankrupt continues to be deprived of the Equal Protection of the Laws of the State of Illinois pertaining to supersedeas and additional supersedeas appeal bonds as secured to the bankrupt by the Fourteenth Amendment to the United States Constitution.

The power to legislate on the subject of bankruptcies is conferred expressly upon Congress under Article I, Section 8 of the United States Constitution.

The mischief of the Referee and of the Trustee extends back to the outset of the proceedings in the concealment and suppression of the true cause of the financial destruction of the bankrupt.

The refusal, failure and neglect of the Trustee to prepare and file a complete inventory and correct appraisal of all the property of the bankrupt and to make report to the court, within five days after his appointment by the Referee to set off the articles to the bankrupt according to the provisions of section 47 of the Act, as unequivocally written by Congress under Order 17(1) and (2) of the General Orders in Bankruptcy, was in furtherance of the scheme and design to defraud the United States under the Bankruptcy Act.

The refusal, failure and neglect of the Referee to duly appoint an appraiser in this estate as unequivocally written by Congress under Section 70, sub. f of the Act, (11 U.S.C. §110(f)), was in furtherance of the conspiracy to defraud the United States under the Bankruptcy Law.

The same property, real and personal of the bankrupt has, nonetheless, been sold and re-sold at public auction by the Trustee "free and clear of all liens, claims and

encumbrances, with said liens, claims and encumbrances to attach to the proceeds of the sale", but without a duly appointed appraiser in this estate, and without the Trustee ever having prepared and filed a complete inventory of all the bankrupt's property and correct appraisal.

Section 70, sub. f of the Act, (11 U.S.C.A. §110(f)), requires the bankrupt's property be appraised and obviously a correct appraisal of the bankrupt's interest in a piece of property is impossible without knowing whether his title is clear or merely in equity subject to encumbrances, the amounts, validity and priority.

The fraud and conspiracy upon the supersedeas and additional supersedeas appeal bonds of the bankrupt are not denied or controverted by the Referee, and cannot be denied or controverted but merely ignored, circumvented and evaded.

A conspiracy to defraud the United States encompassed within Title 18 U.S.C.A. § 371 involves "any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government". *United States* v. *Johnson,* 383 U.S. 169, 172 (1966).

"To conspire to defraud the United States means among other things 'to interfere with or obstruct one of its lawful governmental functions' by any dishonest means. It is not necessary that the government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation or otherwise". *Braatelien* v. *United States,* 147 F.2d 888, 893-894 (C.A. 8th 1945).

Equal access to the Court and an opportunity to be heard upon appeal was an integral part of petitioner's appeal.

The *sua sponte* decision completely denies access to the Court and works a continuing deprivation of petitioner's First Amendment Federal Constitutional rights to be heard upon appeal, and a continuing deprivation of procedural due process of law secured by the Due Process Clause of the Fifth Amendment to the United States Constitution, and, works a continuing deprivation of Fourteenth Amendment Federal Constitutional rights of the Equal Protection of the Laws of the State of Illinois to the bankrupt, and a continuing deprivation of the bankruptcy Law.

II.

The Sua Sponte Decision Issued By The Court Of Appeals Denying Petitioner Equal Access To The Court And Depriving Petitioner Of First And Fifth Amendment Federal Constitutional Rights Is In Furtherance Of The Scheme And Plan To Conceal The "Conflict Of Interests" Of The Referee, The Trustee And District Judge With The Bankrupt's Estate By Misuse And Abuse Of Local Rule 21 Of The Rules In Bankruptcy For The Said District Court, And Abrogates The Right Granted By Congress Under 11 U.S.C.A. §67(c) And §67(a)(8) To Seek Judicial Review Of The Referee's Orders As Unequivocally Written By Congress And Unconstitutional As Applied To Petitioner.

28 U.S.C.A. § 2075 provides that "The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure under the Bankruptcy Act. . . ."

The mischief of the Referee and of the Trustee extends back to the outset of this bankruptcy proceedings, as is set forth in the response filed by petitioner on May 19, 1972 to the *sua sponte* order to show cause issued in camera on May 15, 1972 by the Referee, and the timely petition for review filed May 30, 1972.

§ 67(c) of Title 11 U.S.C.A. (Section 39c of the Act), provides the only method of judicial review of the Referee's orders.

When the petition for review is filed, the Referee is under a peremptory duty to issue a certificate and to comply with the other requirements of section 39a(8) of the Act, (11 U.S.C.A. § 67(a)(8)). *Collier on Bankruptcy*, 14th Ed., Vol. 2, Section 39.16, p. 1479 (1968).

The misuse and abuse of Rule 21 of the Rules in Bankruptcy for the said District Court was calculated so as to remove the Petitions For Removal of Trustee, theretofore filed by creditors-sureties and co-sureties, Margaret Gilio, Clarence Boling and Helen Boling, from the Bankruptcy Court, and to conceal and suppress the petition for removal of the Trustee as theretofore filed by the Bankrupt, and to deprive the bankrupt of counsel after the discharge of Attorney Charles A. Covey, and so as to remove the Petition for review of this petitioner from the bankruptcy court, as clearly established by App. O.

The statutory duty of the Referee as unequivocally written by Congress under Order 17 (3) of the General Orders in Bankruptcy provides that "it shall be the duty of the court" to make an order requiring the Trustee to show cause why he should not be removed from office for neglect to file any report or statement which it is made his duty to file by the Act of the general orders. In addition, section 2a(17) of the Act, (11 U.S.C.A. § 11 (a)(17)), provides for removal of the Trustee "upon complaints of creditors", or upon the Court's own motion.

In furtherance of the conspiracy to defraud the United States under the Bankruptcy Act and to "retain the fruits of the fraud", the Trustee, William H. Christison, refused, failed and neglected to perform the duties as

unequivocally written by Congress under Section 47a(2), (5), (6), (7a), (8), (10) and (12) of the Bankruptcy Act, (11 U.S.C.A. § 75 (a) (2), (5), (6), (7a), (8), (10) and (12)).

This Court in *Mosser* v. *Darrow,* 341 U.S. 267, 271 (1951) said:

> "Equity tolerates in Bankruptcy Trustees no interest adverse to the trust. This is not because such interests are always corrupt but because they are always corrupting".

The *sua sponte* decision issued by the Court of Appeals abrogates both § 67(c) and §67(a)(8) of Title 11 U.S.C.A. to defeat and obstruct the right to judicial review of the Referee's orders as unequivocally written by Congress and so as to confer unlimited and unbridled powers upon the Referee and upon the district Judge under said local Rule 21 in Bankruptcy, and completely denies equal access to the court.

III.

The Citations Of Two Cases In The Sua Sponte Decision Of The Court Of Appeals Were Calculated To Be Misleading And Deceiving In That Neither Of The Two Cases Cited Involve The Jurisdiction Of The Bankruptcy Court Or Rule 21 Of The Rules In Bankruptcy For The United States District Court For The Southern District Of Illinois, Nor Involve Similar Factual Circumstances And The Said Sua Sponte Decision Is, Nonetheless , In Direct Conflict With The Opinion Rendered In In Re Fisher, 179 F. 2d 361 (C.A. 7th 1950), And In Direct Conflict With The Ruling Held By The Said Court Of Appeals In In Re Acme Furnace Fitting Co., Inc., 302 F.2d 318 (C.A. 7th 1962), And Therefore, Unconstitutional As Applied To Petitioner.

In *In re Fisher,* 179 F.2d 361, 370, the Court of Appeals held that the proceedings commenced against respondent

Fisher, an Attorney at Law, in the district court by the Attorney for the Trustee of the bankruptcy Estate, with 24 specifications of unprofessional conduct, the most serious of which was the charge of a conflict of interest, was not *an original proceedings.* The *order appealed from* by Respondent Fisher was REVERSED WITH DIRECTIONS THAT IT BE VACATED, and not as in the instant case, with DIRECTIONS "TO ENTER JUDGMENT IN NO. 72-1800 REVERSING THE JUDGMENT APPEALED FROM AND REMANDING THE CAUSE FOR FURTHER PROCEEDINGS", in excess of the jurisdiction and power conferred upon the Bankruptcy Court for disbarment, but pursuant to the scheme and design to defeat judicial review of the Referee's orders by suppression of, *inter alia,* the timely petition for review, and the issue of the constitutionality of said local Rule 21 of the Rules in Bankruptcy for the said District Court.

Although the Federal District Courts have original jurisdiction of all matters and proceedings in bankruptcy, courts of bankruptcy, as such, are separate and distinct courts, and a Federal District Court's general jurisdiction is a thing entirely separate and apart from its jurisdiction in Bankruptcy. 9 Am. Jur.2d, Bankruptcy, Sec. 26, p. 68.

In addition, the *sua sponte* decision is in direct conflict with the ruling held in *In re Acme Furnace Fitting Co., Inc.,* 320 F.2d 318, 320 (C.A. 7th 1962), wherein the said Court of Appeals held that by the 1960 Amendment to section 39c of the Act, (11 U.S.C.A. § 67(c)), the petition for review of the Referee's orders must be filed within the prescribed ten-day period or extension thereof.

Petitioner's said petition for review was timely filed within the ten-day period.

The *sua sponte* decision, therefore, abrogates both Section 39c and Section 39a(8) of the Act, (11 U.S.C.A. § 67(c) and § 67(a)(8)), to confer unlimited and unbridled powers upon the Referee and upon the district Judge under local Rule 21 of the Rules in Bankruptcy for the said District Court to present obstacles against petitioner, and is repugnant to 28 U.S.C.A. § 2075, against the validity of section 39c and section 39a(8) of the Act as unequivocally written by Congress, and unconstitutional as applied to petitioner.

IV.

The Sua Sponte Decision Issued By The Court Of Appeals Strikes Down Rule 34(a) And Rule 40(a) Of The Federal Rules Of Appellate Procedure To Defeat And Obstruct Petitioner's Right To A Review Upon Appeal, Of An Opportunity To Be Heard Upon Appeal, To Deny Petitioner Equal Access To The Court, And To Deprive Petitioner Of First And Fifth Amendment Federal Constitutional Rights In Furtherance Of The Fraud And Conspiracy Upon The Supersedeas And Additional Supersedeas Appeal Bonds Of The Bankrupt So As To Conceal The Issues Raised Upon Appeal, And Unconstitutional As Applied To Petitioner.

Rule 34(a) of the Federal Rules of Appellate Procedure provides for Oral Argument, notice of the time and place at which oral argument will be heard.

Petitioner's statutory right to notice of time and place of oral argument was defeated and obstructed by the striking down of said Rule 34(a) to divert attention from the real issues upon appeal.

Rule 40(a) of the Federal Rule of Appellate Procedure provides for filing of a timely petition for rehearing which tolls the statute pending disposition of a petition

for rehearing. This statutory right was defeated and obstructed by the issuance of the *sua sponte* decision of the Court of appeals on September 20, 1973.

The striking down of said Rule 34(a) and said Rule 40(a) is violative of petitioner's First Amendment Federal Constitutional rights to be heard upon appeal, and violative of procedural due process of law secured by the Due Process Clause of the Fifth Amendment to the United States Constitution.

V.

The Subsequent Sua Sponte Order Issued By The Court Of Appeals On October 19, 1973, With Recital Of A Denial Of "The Petition For Rehearing" Was False And Fraudulent When Issued So As To Defeat And Obstruct The Real Issues Presented Upon Appeal, And To Create A "Procedural Maze", Repugnant To Procedural Due Process Of Law Secured By The Due Process Clause Of The Fifth Amendment To The United States Constitution And Unconstitutional As Applied To Petitioner.

Petitioner's statutory right to file timely petition for rehearing was defeated and obstructed by the issuance of the *sua sponte* decision of the court of appeals, denying petitioner equal access to the court, and of an "opportunity to be heard" upon appeal.

The Motion to vacate the sua sponte decision has been suppressed.

The subsequent *sua sponte* order issued on October 19, 1973 by the Court of Appeals was calculated to deceive and mislead, and to create a further "procedural maze" in this bankruptcy litigation.

VI.

The Sua Sponte Decision Of The Court Of Appeals And The Subsequent Sua Sponte Order Issued On October 19, 1973 Constitutes Both An Abuse Of Power Under The Jurisdiction Conferred By Congress Under The Bankruptcy Act And An Abnegation Of Judicial Duty With A Refusal To Adhere To Article VI, Clause 2 Of The United States Constitution, And Unconstitutional As Applied To Petitioner.

The power to legislate on the subject of bankruptcies is conferred expressly upon Congress by Article I, Section 8 of the United States Constitution.

First and Fifth Amendment Federal Constitutional rights apply to bankruptcy proceedings.

This Court has long held that the Supremacy Clause makes Federal Law the highest authority in every court in the nation. The federal courts have an obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceedings before them. *Robb* v. *Connolly,* 111 U.S. 624, 637 (1884).

In *Lee* v. *Florida,* 392 U.S. 378, 386, this Court said:

> "Under our Constitution no court, state or federal may serve as an accomplice in the wilful transgression of the Laws of the United States. . . ."

Refusal of the court of appeals to adhere to the Supremacy Clause of the National Constitution works a continuing deprivation of petitioner's First and Fifth Amendment Federal Constitutional rights and conditions petitioner's rights to the equal access to the court, and conditions petitioner's practice of law so as to permit summary disbarment whenever common defenses are asserted on behalf of the bankrupt and as asserted by the creditors,

sureties and co-sureties, Margaret Gilio, Clarence Boling and Helen Boling, and when petitions are filed for the Removal of the Trustee, under pretense and subterfuge of said local Rule 21 of the Rules in Bankruptcy, and, when petitions for review of the Referee's orders are filed.

VII.

The Postponement Of Petitioner's Said Appeal No. 72-1800 To Preference Of 135 Cases Docketed Subsequent To Petitioner's Said Appeal And In Which 135 Cases Oral Arguments Were Set And Heard By The Court Of Appeals, Was In Furtherance Of The Conspiracy To Defraud The United States Under The Bankruptcy Act So As To Afford Opportunity To Co-Conspirators To Achieve The Ultimate Objects Of The Conspiracy Upon The Supersedeas And Additional Supersedeas Appeal Bonds Of The Bankrupt, Making The Sua Sponte Decision Violative Of First Amendment Federal Constitutional Rights And Violative Of Procedural Due Process Of Law Secured By The Due Process Clause Of The Fifth Amendment To The Constitution Of The United States And Unconstitutional As Applied To Petitioner.

During the period in which petitioner was summarily disbarred under pretense and subterfuge of the Bankruptcy Act, all of the property of the bankrupt has been falsely procured by the Trustee, including exclusive possession of the real estate and all contents of the premises, and including the Dental Equipment and furnishings of the Dental Office of the bankrupt, but without a complete inventory of all the property of the bankrupt ever having been prepared and filed, without a correct appraisal and without a duly appointed court appraiser.

All original actions commenced in the said court of appeals for writ of mandamus and/or prohibition directed to the district judge have been denied, with the exception of the original action commenced on May 25,

1973, to compel the district judge to set forth upon separate document, or documents, his oral announcements and findings on May 2, 1973 as required of him pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, being Case No. 73-1474, entitled: "*Anna A. Phelps, Petitioner,* vs. *Honorable Robert D. Morgan, Judge, United States District Court For the Southern District of Illinois, Northern Division, Respondent*".

Wrongful withholding of the writ of mandamus defeats and obstructs three other appeals for review of the Referee's orders.

The ultimate objects of the fraud and conspiracy upon the supersedeas and additional supersedeas appeal bonds of the bankrupt were accomplished on June 8, 1973, by the issuance of a *sua sponte* order of the Referee, with recital of *ex parte* hearing, awarding Betty Dolar, Gregg A. Young, Campbell Andrews and Harper Andrews $44,-951.88 as a non-dischargeable debt and judgment under Section 17a(7) of the Act, upon orders falsely procured in violations and defiance of the supersedeas and additional supersedeas appeal bonds of the bankrupt, and entered against public policy and morals.

Upon filing timely petition for review by petitioner, the district judge issued a *sua sponte* "decision and order" in camera, summarily "affirming in all respects" the *sua sponte* order of the Referee issued on June 8, 1973. Appeal No. 73-1892 of petitioner is presently pending in the said Court of Appeals.

CONCLUSION.

For these reasons this Court should issue its Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit to review its *sua sponte* decision issued September 20, 1973.

Respectfully submitted,

ANNA A. PHELPS
R.F.D. #4, South Euclid Avenue
Princeton, Illinois 61356
Petitioner, Pro Se

(An Attorney at Law, admitted to the Roll of Attorneys in the United States District Court for the Southern District of Illinois on June 21, 1955.)

APPENDIX A

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

September 20, 1973

Before

Hon. Roger J. Kiley, Circuit Judge.

Hon. Thomas E. Fairchild, Circuit Judge.

Hon. Walter J. Cummings, Circuit Judge.

In the matter of EDWARD JOHN KAZUBOWSKI, Bankrupt.

STEVEN J. COVEY, Referee in Bankruptcy, Petitioner-Appellee, No. 72-1800 vs. ANNA A. PHELPS, Attorney at Law, Respondent-Appellant.	Appeals from the United States District Court for the Southern District of Illinois, Northern Division. Nos. P-Bk-71-782, P-Civ-72-60 Robert D. Morgan, Judge.
ANNA V. PHELPS, Plaintiff-Appellant, No. 73-1183 vs. HONORABLE STEPHEN J. COVEY, Referee in Bankruptcy, Defendant-Appellee.	

In these appeals, briefs have been filed by appellant, but not by appellee. Pursuant to Rule 2, F.R.App.P, the court has reached decision herein on the record and briefs, without oral argument.

In No. 72-1800, appellant Phelps, an attorney, appeals from an order of the district court striking her name from the roll of attorneys and disbarring her from practice before the court.

Appellee Covey, a referee in bankruptcy, began these "disciplinary proceedings" as an adjunct to the proceedings in the pending bankruptcy case concerning appellant's brother, whose counsel she was. On his own motion,

appellee issued an order to appellant to show cause why she should not be disbarred for violation of a local bankruptcy rule which forbids an attorney to represent both a bankrupt and one of his creditors in the same case. After a "hearing" before himself, appellee filed a petition in the district court seeking appellant's disbarment. Appellant filed a response denying violation of the Rule, but also asserting justification. Without a hearing, the district court granted the petition. We reverse.

Our recent cases in this area make clear that a district court cannot disbar or suspend an attorney until it has afforded substantial due process in the form of procedural safeguards in the disciplinary proceedings against that attorney. *In re Ming,* 469 F.2d 1352 (7th Cir. 1972); *In re Echeles,* 430 F.2d 347 (7th Cir. 1970). The opportunity to be heard is essential. Appellant was not afforded that opportunity before the district court, and the proceeding was not an adequate substitute.

"[D]isbarment and suspension proceedings are neither civil nor criminal in nature but are special proceedings, sui generis, and result from the inherent power of courts over their officers. Such proceedings are not lawsuits between parties litigant but rather are in the nature of an inquest or inquiry as to the conduct of the respondent." *In re Echeles,* 430 F.2d 347, 349 (7th Cir. 1970).

In No. 73-1183, appellant Phelps appeals from the dismissal of her action against Referee Covey. She sought relief in the nature of mandamus to compel the referee to perform certain acts, allegedly required of him by the General Orders in Bankruptcy, to facilitate a review of his decision in the disciplinary proceeding against her. It sufficiently appears that this proceeding before the referee culminated in his petition in the district court, and that no independent disbarment or suspension order by the referee arose from it. Thus there was no order by the referee appropriate for review. The decision to dismiss was correct.

The clerk of this court is directed to enter judgment in No. 72-1800 reversing the judgment appealed from and remanding the cause for further proceedings; and in No. 73-1183 affirming the judgment appealed from. No costs are allowed to either party in either case.

FILED
JUL 24 1972
at ..... o'clock ..... M
WILLIAM J. LITTELL, CLERK

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

In the Matter of	)	
	)	IN BANKRUPTCY
EDWARD JOHN KAZUBOWSKI,	)	
	)	NO. P-BK-71-782
Bankrupt.	)	

DECISION AND ORDER ON REFEREE'S PETITION

The Referee in Bankruptcy, to whom the captioned case has been referred for administration, has filed a petition with the undersigned judge praying "that Anna A. Phelps be removed from the list of attorneys authorized to practice law" in this court. He cites four reasons for such request, arising primarily from alleged violation by said attorney of local rule in bankruptcy number 21, which, to avoid conflicts of interest, prohibits an attorney from representing a bankrupt who is indebted to a creditor also represented by said attorney. The other reasons amount to specifications of such violation and stated attempts at obfuscation thereof.

With said petition the Referee has certified affidavits of alleged bias and prejudice of the undersigned (dealt with in Decision and Order of the undersigned judge filed herein on June 30, 1972), petitions for review by the creditors involved of the Referee's Order denying them a claimed right of intervention in proceedings involving other creditors, petition for removal of the trustee herein by such creditors, prepared by said attorney, various notices, the Referee's Order to Show Cause "why she should not be removed from the list of attorneys," 22-page response of Anna A. Phelps, thereto attaching multipage Exhibit "A" thru "X" and 1 thru 9, transcript of hearing on such order to show cause, held May 19, 1972, and petition of Anna A. Phelps for review thereof.

In deciding to hear the matter in Decision filed June 30, 1972, this court granted Mrs. Phelps ten days in which to file further response here. On July 10, 1972, she filed response in which she states denials, under oath, that she violated Rule 21, but in which she also seeks to justify violation thereof, attacks the integrity of the Referee and the entire bankruptcy proceedings, makes wholly immaterial assertions, and asks a jury trial "on all fact issues." On July 17, 1972, she also filed here a "Notice of Existence of Constitutional Questions as to Acts of Congress," in which she notifies the court that Rule 21 and some eight specified Acts of Congress relating to bankruptcy are called into question as to their constitutionality because they "permit" some 22 "wrongs," which, insofar as they are intelligible at all, are wholly unsupported and are actually contradicted by the record.

The undersigned has read with care all of said material and has carefully considered same with all the compassion and benefit of any doubt which he can muster for Mrs. Phelps and her brother, the bankrupt herein. Such consideration leads unavoidably to the conclusion that granting the Referee's petition is the only reasonable course, and that no further hearing or oral argument would be in the interest of justice or serve any useful purpose whatsoever.

Violation of Rule 21 by the attorney, Anna A. Kazubowski Phelps, is patently clear. It is equally clear that she is wholly incapable of accepting the fact that most, if not all, questions in her now bankrupt brother's divorce case have become final and that in any event they may not be relitigated in the instant bankruptcy proceedings. While it may not be accurate or fair to

say flatly that she is mentally incapable of representing "anybody in any court," that conclusion, as the Referee notes, is certainly indicated by her performance to date in this court. Her brother's financial problems with his former wife have been the overriding and central theme of all of his and her problems here; and it is abundantly clear that they have refused to accept established legal obligations in that regard. It is apparent that they are emotionally incapable of such acceptance, to the end that anyone who disagrees with them in that regard is guilty of bias, fraud, and everything worse. To the extent that legal obligations are of any concern to him, the bankrupt here could only be better off with independent counsel; and the "creditor-sureties" here, to the extent they have any interest whatsoever in the bankrupt estate, are entitled to objective, professional advice, which obviously is not available from Mrs. Phelps.

Upon closing of the pending bankruptcy, this court could entertain a motion, properly supported. for readmission of Mrs. Phelps to practice law in this district on behalf of others; but it is not reasonably possible to permit her to represent others at present because, perhaps due entirely to emotional family factors, she does not do so with any degree of rationality, respect for the rules, or respect for the legal system.

Accordingly, IT IS ORDERED that the name of ANNA A. KAZUBOWSKI PHELPS, admitted June 21, 1955 as Anna A. Kazubowski, is stricken from the roll of ATTORNEYS admitted to practice in this district under Rule 1 of the rules of this court; and she is HEREBY DISBARRED from such practice on behalf of any person other than herself.

/s/ Robert D. Morgan
United States District Judge

Entered: July 24, 1972

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ILLINOIS

NORTHERN DIVISION

In the Matter of	)	IN BANKRUPTCY
	)	
EDWARD JOHN KAZUBOWSKI,	)	NO. CP BK 71 782
	)	
Bankrupt.	)	

FILED

MAY 31 1972

at .....O'clock.....M.
WILLIAM J. HITTEL, CLERK

PETITION THAT ANNA A. PHELPS BE REMOVED FROM THE LIST OF ATTORNEYS AUTHORIZED TO PRACTICE LAW IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS NORTHERN DIVISION

Now comes Stephen J. Covey, Referee in Bankruptcy, for the above District and Division and respectfully represents;

1. Rule 21 of the Local Rules in Bankruptcy states as follows:

Rule 21

CONFLICT OF INTEREST

"An attorney who represents a creditor, either generally or on a specific case basis, may not represent a bankrupt who is indebted to said creditor."

2. That Anna A. Phelps entered her appearance as attorney for the bankrupt April 21, 1972 at which time she was informed by your Referee that she could not also represent creditors.

3. That subsequent to April 21, 1972, Anna A. Phelps did represent as an attorney, three creditors of the bankrupt, namely, Margaret Gilio, Clarence W. Boling and Helen L. Boling.

4. The legal services performed by the said Anna A. Phelps for the said creditors consisted of preparing, obtaining execution of, and filing the following documents:

(1.) Petitions for review.

(2.) Petitions for removal of trustee.

(3.) Affidavits of bias and prejudice re: petitions of creditors for review.

(4.) Applications of Clarence W. Boling, Helen L. Boling and Margaret Gilio, creditors, for Order staying or suspending further proceedings or hearings on the application of Betty Dolar, a/k/a Betty Dolar Kazubowski, Gregg A. Young, and Andrews & Andrews, pending petition for review for lack of filing proof of claim by said applicants, and for other relief.

(5.) Affidavits of mailing petitions for review and applications for order to stay or suspend further proceedings or hearings pending petitions for review.

(6.) Notices of filing petitions for review and applications for order to stay or suspend further proceedings or hearings pending petitions for review.

5. On the 15th day of May, 1972 this Court entered an Order requiring Anna A. Phelps to show cause on the 19th day of May, 1972, why she should not be removed from the list of attorneys authorized to practice law in the United States District Court for the Southern District of Illinois, Northern Division. In response to the Order to Show Cause, Anna A. Phelps filed an answer and demand for jury trial May 19, 1972. Testimony was taken of Margaret Gilio and Clarence W. Boling, the creditors, Edward John Kazubowski, the bankrupt, and Anna A. Phelps, the bankrupt's attorney. At said hearing Anna A. Phelps refused to answer direct questions of this Court as to whether she prepared the documents in question. Wherefore, your Referee prays that Anna A. Phelps be removed from the list of attorneys authorized to practice law in the United States District Court for the Southern District of Illinois, Northern Division for the following reasons:

1. She has acted as attorney for the bankrupt, Edward John Kazubowski, and creditors, Clarence W. Boling, Helen L. Boling, and Margaret Gilio in violation of Local Rule 21.

2. That the PETITIONS FOR REVIEW and the APPLICATIONS FOR ORDER STAYING OR SUSPENDING FURTHER PROCEEDINGS OR HEARINGS ON THE APPLICATION OF BETTY DOLAR, A/K/A BETTY DOLAR KAZUBOWSKI, GREGG A. YOUNG, AND ANDREWS & ANDREWS, PENDING PETITIONS FOR REVIEW FOR LACK OF FILING PROOF OF CLAIM BY SAID APPLICANTS, AND FOR OTHER RELIEF FILED BY CLARENCE W. BOLING, HELEN L. BOLING AND MARGARET GILIO state that these creditors are appearing pro se. This statement is false because Anna A. Phelps prepared these documents and through the bankrupt advised the creditors to sign them and then filed the documents for the creditors. Anna A. Phelps has therefore, acted as attorney for the creditors in the preparation and filing of these documents and has attempted to mislead this Court by alleging that they were filed pro se.

3. That said Anna A. Phelps refused to answer material and relevant questions put to her by this Court in regard to the preparation of said documents.

4. That an examination of the response filed by Anna A. Phelps to the Order to Show Cause and an examination of the six documents prepared for Clarence W. Boling, Helen L. Boling, and Margaret Gilio and a further examination of the other voluminous pleadings filed by Anna A. Phelps in this matter, indicate that she has lost contact with reality and is mentally incapable of representing anybody in any court.

DATED 5/31/72.

/s/ STEPHEN J. COVEY
Referee in Bankruptcy

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

In the Matter of	)	IN BANKRUPTCY
	)	
EDWARD JOHN KAZUBOWSKI,	)	NO. P BK 71 782
	)	
Bankrupt.	)	

FILED
o'clock ___M
MAY 15 1972
STEPHEN J. COVEY,
Referee in Bankruptcy,

ORDER TO SHOW CAUSE

TO: ANNA A. PHELPS
133 E. Division St.
Kewanee, Illinois

THIS matter comes on to be heard upon the oral motion of the Referee STEPHEN J. COVEY;

IT IS ORDERED, ADJUDGED AND DECREED that ANNA A. PHELPS show cause on the 19th day of MAY, 1972, at 2:30 P.M. in Room 329, UNITED STATES POST OFFICE BLDG., PEORIA, ILLINOIS, why she should not be removed from the list of attorneys authorized to practice law in the U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS for the reason that she has violated Rule 21 of the Rules in Bankruptcy for the U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS in that she has acted as attorney for two creditors, to wit, Margaret Gilio and Clarence and Helen Boling, while at the same time acting as attorney for the bankrupt. Said Rule 21 is as follows:

Rule 21
CONFLICT OF INTEREST

"An attorney who represents a creditor, either generally or on a specific case basis, may not represent a bankrupt who is indebted to said creditor.

ENTERED *August 26, 1965*"

ENTERED at Peoria, Illinois this 15th day of May, 1972.

/s/ STEPHEN J. COVEY
Referee in Bankruptcy

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NO. 72-1800

In the Matter of EDWARD JOHN KAZUBOWSKI, Bankrupt. (P-BK-71-782)

STEPHEN J. COVEY, Referee in Bankruptcy,

Petitioner-Appellee,

vs.

ANNA A. PHELPS, Attorney at Law,

Respondent-Appellant.

Appeal from the United States District Court For the
Southern District of Illinois, Northern Division.

Honorable ROBERT D. MORGAN, Judge Presiding

MOTION TO VACATE SUA SPONTE DECISION SHOWN ENTERED ON SEPTEMBER 20, 1973, DENYING APPELLANT EQUAL ACCESS TO THE COURT, DENYING AND DEPRIVING APPELLANT OF FIRST AND FIFTH AMENDMENT FEDERAL CONSTITUTIONAL RIGHTS, TAINTED WITH FRAUD PURSUANT TO THE CALCULATED, WELL PLANNED SCHEME TO DEFEAT, IMPAIR AND OBSTRUCT JUSTICE AND WITH REFUSAL TO EXERCISE JUDICIAL FUNCTION WITH ABNEGATION OF JUDICIAL DUTY UNDER AN ACT OF CONGRESS RELATING TO BANKRUPTCY.

ANNA A. PHELPS,
Respondent-Appellant, PRO SE
R.F.D. #4, South Euclid Avenue
Princeton, Illinois 61356

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NO. 72-1800

In the Matter of EDWARD JOHN KAZUBOWSKI, Bankrupt. (P-BK-71-782)

STEPHEN J. COVEY, Referee in Bankruptcy,

Petitioner-Appellee,

vs.

ANNA A. PHELPS, Attorney at Law,

Respondent-Appellant.

Appeal from the United States District Court For the
Southern District of Illinois, Northern Division

Honorable ROBERT D. MORGAN, Judge Presiding

MOTION TO VACATE SUA SPONTE DECISION SHOWN ENTERED ON SEPTEMBER 20, 1973, DENYING APPELLANT EQUAL ACCESS TO THE COURT, DENYING AND DEPRIVING APPELLANT OF FIRST AND FIFTH AMENDMENT FEDERAL CONSTITUTIONAL RIGHTS, TAINTED WITH FRAUD PURSUANT TO THE CALCULATED, WELL PLANNED SCHEME TO DEFEAT, IMPAIR AND OBSTRUCT JUSTICE AND WITH REFUSAL TO EXERCISE JUDICIAL FUNCTION WITH ABNEGATION OF JUDICIAL DUTY UNDER AN ACT OF CONGRESS RELATING TO BANKRUPTCY.

Respondent, Anna A. Phelps, appellant in the above entitled appeal No. 72-1800 moves this Court to vacate the sua sponte decision shown entered on September 20, 1973, denying appellant equal access to the Court, denying and depriving appellant of First and Fifth Amendment Federal Constitutional rights, and which said sua sponte decision is tainted with fraud pursuant to the calculated, well planned scheme to defeat, impair and obstruct justice, and with a refusal to exercise judicial function and with abnegation of judicial duty under an Act of Congress relating to Bankruptcy, and says as follows:

1. By the filing of this Motion appellant does not waive any right to oral argument or to appear pro se in this cause and to be heard upon this appeal, or waive any right, or rights, granted to appellant pursuant to the

Federal Rules of Appellate Procedure of notice of the time and place at which oral argument will be heard, or any right, or rights, for a hearing by this Court in banc;

2. By the filing of this Motion appellant does not waive any right, or rights, for a determination of the issues presented upon appeal under an Act of Congress relating to Bankruptcy or of the twelve (12) issues presented and raised upon appeal in this cause;

3. For reasons of the arbitrary obstacles placed against appellant by the sua sponte decision entered September 20, 1973, this appellant cannot file a petition for "rehearing" because "no hearing" has been afforded to appellant; *a copy of the sua sponte decision is attached hereto as Exhibit "A";*

4. By more recital in the sua sponte decision of reaching a "decision" pursuant to "Rule 2, F.R.A.P." this Court may not abrogate or deprive appellant of First and Fifth Amendment Federal Constitutional rights of notice and "an opportunity to be heard" upon this appeal, or of appellant's right to review upon this appeal;

5. The fundamental requirements of notice and "an opportunity to be heard" are secured by the due process Clause of the Fifth Amendment to the United States Constitution and may not arbitrarily and capriciously be totally disregarded by this Court;

6. The sua sponte decision is an invalid decision, calculated to defeat and obstruct appellant's right to a review upon appeal and upon the twelve (12) issues raised upon appeal and so as to defeat and obstruct a determination upon the merits of any of the twelve (12) issues raised upon appeal, contrary to and inconsistent with all sense of justice and contrary to Constitutional Government;

7. The sua sponte decision is both an abnegation of judicial function and a refusal to perform judicial duty under an Act of Congress relating to

kruptcy, violative of Article VI, Clause 2 of the United States Constitution;

8. The sua sponte decision was calculated to confer unlimited and ridled powers upon the said REFEREE-APPELLEE and upon the said District ge in that on remand, the said REFEREE-APPELLEE and the said District Judge consider and decide the issues not determined by this Court upon appeal are free to make any order upon the issues circumvented, evaded and ignored this Court and thereby subjecting and caused to be subjected to appellant her litigation and multiplicity of appeals because this Court leaves the igation in a far worse posture and in a manner more evil than before the fecting of the appeal;

9. Recital in the sua sponte decision of "disciplinary proceedings" an adjunct to the proceedings in the pending bankruptcy case are not authorized er an Act of Congress relating to Bankruptcy and no provision of the Bankruptcy is cited by this Court;

10. The sua sponte decision was calculated to be in direct conflict h the opinion rendered by this Court in In re Fisher, 179 F.2d 361, 370 A. 7th 1950) wherein "disciplinary proceedings" as an adjunct to the pro-dings in the pending bankruptcy case was held not to be an"ORIGINAL PROCEEDING, the order of disbarment appealed from by Respondent Fisher was ORDERED ERSED WITH DIRECTIONS THAT IT BE VACATED.

11. The sua sponte decision REVERSING the sua sponte order of the said trict Judge summarily disbarring this appellant, with directions to the Clerk EMAND THE CAUSE FOR FURTHER PROCEEDINGS is not authorized under the Bankruptcy but rather, calculated to be in excess of the jurisdiction conferred under Act of Congress relating to Bankruptcy and further calculated to confer un-ited and unbridled powers upon the said District Judge and upon the REFEREE-EE not otherwise conferred under an Act of Congress relating to Bankruptcy so as to

create further litigation, multiplicity of appeals and so as to leave the ba litigation in a posture far worse and in a posture more evil than before perf ing the appeal;

12. The sua sponte decision was calculated to prolong the bankruptcy litigation so that the objects of the fraud and conspiracy upon the superseda appeal bonds of EDWARD JOHN KAZUBOWSKI, bankrupt, could be achieved;

13. The sua sponte decision was calculated to prolong the bankruptcy litigation so that the objects of the fraud and conspiracy upon the separate property "stipulation" settlement decree of August 31, 1966 could be achieved;

14. The sua sponte decision was calculated to prolong the bankruptcy litigation so as to conceal and suppress the corrupt administering and procur of the continued corrupt administering of an Act of Congress relating to Bankruptcy in this Bankruptcy Estate in that, inter alia, the REFEREE-APPELLEE and the District Judge act as a "shield" for the calculated omissions of statutory obligations imposed upon the office of the trust of the TRUSTEE of the Bankruptcy estate, and which calculated omissions of statutory obligations imposed upon the said TRUSTEE, WILLIAM H. CHRISTISON, extend back to the time of the appointment of WILLIAM H. CHRISTISON as TRUSTEE by the REFEREE-APPELLEE;

15. The sua sponte decision conceals rather than reveals the fraud and conspiracy carried into the Bankruptcy Estate so as to falsely procure all of the assets of the bankrupt's estate upon created and false claims under the supersedeas appeal bonds of EDWARD JOHN KAZUBOWSKI and upon orders falsely procured against public policy and morals and in repeated violation and defiance of the supersedeas appeal bonds of EDWARD JOHN KAZUBOWSKI, bankrupt;

16. The sua sponte decision conceals and suppresses the fraud and conspiracy committed against the UNITED STATES under an Act of Congress relating to Bankruptcy set forth in the Response and confers unlimited and unbridled powers upon the said District Judge and upon the REFEREE-APPELLEE to continue

procuring of the corrupt administering of an Act of Congress relating to Bankruptcy and to make determinations upon remand to the District court of the issues presented upon appeal to this Court, contrary to the power and jurisdiction conferred upon this Court as a Court of Appeals and violative of appellant's right to a review and determination upon the merits of the issues raised upon appeal by this Court;

Moreover, conferring unlimited and unbridled powers upon the said District Judge and upon the said REFEREE-APPELLEE upon remand of the sua sponte decision entered by this Court is repugnant with the jurisdiction conferred upon the Bankruptcy Courts by an Act of Congress;

17. The sua sponte decision by calculated omission of the issues of the unconstitutionality of Rule 21 of the Rules In Bankruptcy For the United States District Court For the Southern District of Illinois, and the refusal of this Court to exercise judicial function under an Act of Congress relating to Bankruptcy, leaves the issues of the unconstitutionality of said local Rule number 21 for determination of the said District Judge, who, heretofore, circumvented, evaded and simply ignored said issues and the bankruptcy litigation is placed in a posture far worse and in a posture far more evil than before the appeal had been perfected, in that the said District Judge is conferred with unlimited and unbridled powers to misuse and wholesale abuse of said local Rule number 21;

18. The sua sponte decision by suppression and concealment of, inter alia, the unconstitutionality of said local Rule 21 and the abnegation of judicial function of this Court under an Act of Congress relating to Bankruptcy and under the laws granting the right to an appeal, subjects and causes to be subjected to this appellant upon remandment to summary disbarment by the said District Judge upon mere filing of a created petition by the REFEREE-APPELLEE with the Clerk of the said District Court whenever common defenses are asserted

by the said bankrupt, EDWARD JOHN KAZUBOWSKI, and by the creditors-sureties, CLARENCE W. BOLING, HELEN L. BOLING and MARGARET GILIO, against the created and false claims filed against the bankruptcy estate upon orders falsely procu in violation and defiance of the supersedeas appeal bonds and additional supe sedeas appeal bonds of EDWARD JOHN KAZUBOWSKI, bankrupt, so as to defeat all resistance to the created and false claims filed against the bankrupt's estate

The sua sponte decision, therefore, is an invalid determination upon this appeal and was calculated to confer unlimited and unbridled powers upon the said District Judge and upon the said REFEREE-APPELLEE under an Act of Congress relating to Bankruptcy so as to defeat and obstruct any resistance whatever against the created and false claims procured in this bankruptcy est

19. The sua sponte decision by suppression and concealment of the issues of the unconstitutionality of said local Rule 21 and the abnegation of judicial function of this Court under an Act of Congress relating to Bankruptcy and under the laws granting the right to an appeal, subjects and causes to be subjected to this appellant upon remand to the said District Court, to arbitra and capricious summary disbarment by the said District Judge upon mere filing of a Petition of the REFEREE-APPELLEE with the Clerk of the said District Cour whenever common defenses are asserted by the bankrupt, EDWARD JOHN KAZUBOWSKI, and by the creditors-sureties, CLARENCE W. BOLING, HELEN L. BOLING and MARGARE GILIO, of denials to the equal access to the Court and of denials of procedura due process of law secured by the Due Process Clause of the Fifth Amendment to the United States Constitution, so as to defeat all resistance to the created and false claims filed against the bankrupt's estate and so as to defeat the guarantees secured by the Federal Constitution to procedural due process of la

The sua sponte decision, therefore, is an invalid determination upon this appeal and was calculated to confer unlimited and unbridled powers upon the said District Judge and upon the said REFEREE-APPELLEE, STEPHEN J.

COVEY, so as to defeat and obstruct justice and so as to continue to deny and to deprive appellant of procedural due process of law and to force appellant to seek relief from this Court when this Court has at all times in the original actions commenced in this Court for a writ of mandamus and/or writ of prohibition directed to the said District Judge denied all relief to appellant;

20. The sua sponte decision is an invalid determination in that the refusal to exercise judicial function by this Court under an Act of Congress relating to Bankruptcy and under the laws granting the right to an appeal, and the calculated omission of a determination upon the merits of the unconstitutionality of the said local Rule 21, confers powers upon the said REFEREE-APPELLEE, STEPHEN J. COVEY, to act as the attorney for the TRUSTEE OF THE BANKRUPTCY ESTATE and as the TRUSTEE OF THE BANKRUPTCY ESTATE, and which powers conferred by the omissions in the said sua sponte decision are specifically prohibited by Section 39b of the Bankruptcy Act, 11 U.S.C. §67(b);

This Court therefore, leaves the posture of this bankruptcy litigation in a posture far worse and in a posture far more evil than before the filing of the appeal;

21. The sua sponte decision is an invalid determination upon this appeal and was calculated to continue suppression and concealment of, inter alia, the refusal of the REFEREE-APPELLEE to perform ministerial and mandatory duties required of REFEREES under Section 39a(8) of the Bankruptcy Act, 11 U.S.C. §67(a)(8) and pursuant to Section 39c of the Bankruptcy Act, 11 U.S.C. §67(c), in that the timely petition for review filed May 30, 1972 by this appellant, and petitioner therein, was/defeated and obstructed thereafter by the trickery, artifice and fraud of the joint acts of the said REFEREE-APPELLEE and of the said District Judge by the mere filing of a Petition of the said REFEREE-APPELLEE, STEPHEN J. COVEY, with the Clerk of the said District Court under pretense and subterfuge of a "conflict of interest" under local Rule 21, but without ever stating what the "conflict of interest" consisted of and/or

the manner in which the "alleged conflict of interest" was in conflict with the bankruptcy estate of EDWARD JOHN KAZUBOWSKI, bankrupt; that appellant's right to an "appeal" within the District Court judicial structure was corruptly defeated and obstructed by the summarily disbarment of this appellant and the joint and concerted acts of the said REFEREE-APPELLEE and the said District Judge who assumed and exercised powers not conferred upon the Bankruptcy Court but who, nonetheless, misued and with wholesale abuse frustrated the litigation so as to conceal and suppress the timely petition for review filed May 30, 1972.

Therefore, this Court in abnegating judicial function and with persistent refusal to exercise judicial duty under an Act of Congress relating to Bankruptcy and by the sua sponte decision upon remanding to the District Court confers powers which are unlimited and unbridled upon the said District judge and upon the said REFEREE-APPELLEE to continue to deny the petition for review filed May 30, 1972 and to deny any petition for review in that the said REFEREE-APPELLEE may completely disregard sections 39c and section 39a(8) of the Bankruptcy Act, 11 U.S.C. §67(c) and §67(a)(8) by virtue of the refusal of this Court to make a determination upon the merits and appellant is without a remedy/in this Court/ upon the original actions commenced for petition for writ for relief upon this appeal and of mandamus to direct the said District Judge to compel the REFEREE-APPELLEE to perform ministerial and mandatory obligations pursuant to Section 39a(8), 11 U.S.C. §67(a)(8); the posture of the bankruptcy litigation as created by the abnegation of judicial duty of this Court is far worse and far more evil than before the appeal had been perfected;

22. The sua sponte decision is an invalid determination upon this appeal and a refusal to exercise judicial function under an Act of Congress relating to Bankruptcy and calculated to be in direct conflict with the opinio

rendered by this Court in In re Acme Furnace Fitting Co., 302 F.2d 318, 320 (C.A. 7th 1962), so as to further frustrate the litigation, in that this Court ruled in In re Acme Furnace Fitting Co., supra, that by the 1960 Amendment to Section 39c of the Bankruptcy Act, 11 U.S.C. §67(c), a petition for review must be filed within the ten-day period; the timely petition for review filed by this appellant, and petitioner therein, was thereafter defeated and obstructed by mere filing of a petition by the REFEREE-APPELLEE with the Clerk of the said District Court and by misuse and wholesale abuse of mere recital of local Rule 21 and the unwarranted and unfounded conclusions of the said REFEREE-APPELLEE;

Therefore, this Court, by the sua sponte decision totally abrogates by an Act of Congress relating to Bankruptcy, and nullifies a right granted/to petition for review of orders of the said REFEREE-APPELLEE pursuant to Section 39c of the Act, 11 U.S.C. §67(c) to confer upon the REFEREE-APPELLEE, unlimited, unbridled and arbitrary powers/so as to defeat and obstruct an "appeal" within the District Court judicial structure, and to confer unlimited, unbridled and arbitrary powers upon the said District Judge, and which said judge/refuses to exercise judicial function under the Bankruptcy Act and to compel the said REFEREE-APPELLEE to perform ministerial and mandatory obligations pursuant to Section 39a(8) of the Act, 11 U.S.C. §67(a)(8);

23. The sua sponte decision, and entered by the/arbitrary refusal of this Court to exercise judicial duty with abnegation of judicial function, confers unlimited and unbridled powers upon the REFEREE-APPELLEE and upon the said District Judge so as to make up substantive rules of law as the bankruptcy litigation proceeds but without regard to the jurisdiction conferred upon the said REFEREE-APPELLEE or upon the Bankruptcy courts or upon the District Courts under the Bankruptcy Act;

Therefore, the sua sponte decision is repugnant to and violative of substantive due process of law, violative of procedural due process of law secured by the Due Process Clause of the Fifth Amendment to the United States

Constitution and violative of 28 U.S.C. §2075 (Bankruptcy Rules), and violative of Article I, Section 8 of the United States Constitution, leaving the bankruptcy litigation in a posture far worse and in a manner far more evil than before perfecting the appeal;

24. The sua sponte decision was deliberately entered by this Court so as to defeat unearthing of the fraud and continuing conspiracy perpetrated upon the supersedeas appeal bonds and additional supersedeas appeal bonds of the bankrupt, EDWARD JOHN KAZUBOWSKI, and so as to continue suppression of the true cause of the financial destruction of the said bankrupt, EDWARD JOHN KAZUBOWSKI, violative of the purpose and intent of the Bankruptcy Law and violative of Article VI, Clause 2 of the United States Constitution;

25. The sua sponte decision is an invalid determination of the issues presented upon appeal, with abnegation of judicial function and refusal to exercise judicial duties under an Act of Congress relating to bankruptcy so as to avoid determination of and so as to suppress the contents of the Affidavit of Bias and Prejudice of the said District Judge, filed by petitioner, and the appellant herein, on May 30, 1972 immediately after filing of the Petition for review and so as to continue suppression of the participation of the said District Judge prior to the filing of the petition of bankruptcy by ATTORNEY CHARLES A. COVEY, in the conspiracy to extort $28,000.00 from the members of the family of the said EDWARD JOHN KAZUBOWSKI, including this appellant, for the purchase of the liberty of the said EDWARD JOHN KAZUBOWSKI, upon orders falsely procured in repeated violations of the said supersedeas appeal bonds of the said EDWARD JOHN KAZUBOWSKI;

26. This Court subjected and caused to be subjected to appellant's said appeal to postponement of 49 cases docketed subsequent to appellant's said appeal and to which said 49 cases this Court gave preference over appellant's appeal and heard oral arguments during the April session, and subjected and caused to be subjected to

this appellant's said appeal to a further postponement of additional 86 cases docketed subsequent to appellant's said appeal and which additional 86 cases this Court gave preference over appellant's appeal and set the additional 86 cases for oral argument during the September session; that the total of 135 cases filed subsequent to appellant's appeal were not entitled to preference of oral argument over appellant's said appeal;

Postponement of appellant's appeal and arbitrary denial to the equal access to the Court and arbitrary deprivation of an "opportunity to be heard" upon appeal was but a part of the calculated scheme to afford the REFEREE-APPELLEE and the said District Judge to procure the continued corrupt administering of the Bankruptcy Law in this Bankruptcy estate to accomplish and achieve the objects of the conspiracy perpetrated upon the supersedeas appeal bonds and additional appeal bonds of the said EDWARD JOHN KAZUBOWSKI, bankrupt, and which objectes of the conspiracy perpetrated upon the supersedeas appeal bonds have been achieved in this bankruptcy proceedings;

27. The sua sponte decision is an invalid determination upon this appeal by abnegation of judicial function and refusal to perform judicial duty and was calculated so as to avoid determination of, inter alia, the jurisdiction of the acts and proceedings of the REFEREE-APPELLEE on May 15, 1972 and on May 19, 1972 from which the timely petition for review was filed on May 30, 1972, so as to preclude and foreclose rulings or determinations, inter alia, upon the said orders of the REFEREE-APPELLEE entered on May 15, 1972 and on May 19, 1972, so as to defeat and obstruct the "appeal" within the District Court judicial structure upon the said petition for review pursuant to Section 39c and Section 39a(8) of the Bankruptcy Act, 11 U.S.C. §§67(c) and §67(a)(8);

The sua sponte decision, therefore, was entered by collusion of Judges of this Court with the REFEREE-APPELLEE, the District Judge and with other persons, some of whom are unknown to appellant, so as to procure the continued

corrupt administering of the Bankruptcy Law in this Bankruptcy Estate so as to procure fraudulent awards of money upon created and false claims, and which created and false claims are filed against the bankrupt's estate upon orders falsely procured against public policy and morals and orders falsely procured in repeated and continuous violation and defiance of the supersedeas appeal bonds and additional supersedeas appeal bonds of the said EDWARD JOHN KAZUBOWSKI, bankrupt;

28. The sua sponte decision was calculated to be violative of and in derogation of procedural due process of law secured by the Due Process Clause of the Fifth Amendment to the United States Constitution, and is violative of and in derogation of procedural due process of law secured by the Due Process Clause of the Fifth Amendment to the United States Constitution;

29. The sua sponte decision was calculated to mislead and to deceive the Court by suppression and concealment of, inter alia, the twelve (12) issues presented upon appeal and under an Act of Congress relating to Bankruptcy;

30. The sua sponte decision was further calculated to mislead and to deceive the Court by suppression and concealment of, inter alia, the orders of the District Judge from which this appeal was perfected as clearly established in the Notice of Appeal filed August 22, 1972, and which Notice of Appeal is a part of the record upon appeal, and which Notice of Appeal is included in Appellant's Brief and Appendix;

31. The sua sponte decision, calculated to deprive and to deny appellant equal access to the Court and of an "opportunity to be heard" upon appeal, is but a pretense and subterfuge of a review in that the said sua sponte decision is not a review of the orders from which the appeal was perfected - is not a determination on the merits of any issue presented upon appeal for determination by this Court - is not a review upon the truth of the record upon appeal - and, is not pursuant to the jurisdiction conferred under an Act of Congress relating

to Bankruptcy, but to the contrary, the said sua sponte decision is a fraud and conspiracy committed against the United States under an Act of Congress relating to Bankruptcy and more specifically, but not necessarily limited to, Section 2a(10) of the Bankruptcy Act, 11 U.S.C. §11(a)(10), (Creation of Courts of Bankruptcy and Their Jurisdiction), Section 39a(8), b and c of the Bankruptcy Act, 11 U.S.C. §67(a)(8), (b) and (c), and Local Rule 21 of the Rules In Bankruptcy For the United States District Court For the Southern District of Illinois;

32. The docket entries in this cause reveals that on October 18, 1972, an entry of Appearance was filed for the REFEREE-APPELLEE, STEPHEN J. COVEY, by MAX J. LIPKIN, Assistant United States Attorney For the said District, but who thereafter refused and failed to file an appellee's brief because the allegations of appellant and the provisions of the Bankruptcy Act cited in Appellant's Brief and Appendix CANNOT BE DENIED and HAVE NOT BEEN DENIED, but merely ignored, circumvented and evaded;

33. No Motion ever having been filed by appellant for consolidation of appeals, this appellant also files 25 copies of a Motion To Vacate the sua sponte decision concerning appeal No. 73-1183, with Affidavit attached thereto in support of the said Motion;

33. Appellant attaches hereto as Exhibit "B" her Affidavit in support of this Motion.

34. This Court can take judicial notice of the original actions commenced by this appellant, in this Court for writ of mandamus or writ of prohibition directed to the said District Judge to compel the said District Judge to exercise judicial duty and to affirmatively enforce the provisions of the Bankruptcy Act, and more especially the original action commenced on May 25, 1973 for a writ of mandamus by this appellant, to compel the said District Judge to set forth his oral announcements and findings on May 2, 1973 upon separate documents as required of the said Judge pursuant to Rule 52(a) of the Federal Rules of Civil Procedure and which said

duties required of the said District Judge are clear and indisputable; that this appellant's petition for writ of mandamus has, nonetheless, been wrongfully withheld by this Court so as to defeat, impair and obstruct three other appeals in this bankruptcy litigation for appellant; that the said original action commenced in this Court on May 25, 1973 is Case No. 73-1474, entitled: "In the Matter of EDWARD JOHN KAZUBOWSKI, Bankrupt, ANNA A. PHELPS, Petitioner, vs. Honorable ROBERT D. MORGAN, District Judge, United States District Court For the Southern District of Illinois, Northern Division, and Chief Judge, United States District Court For the Southern District of Illinois, Respondent";

That the wrongful withholding of issuing the writ of mandamus is but a part of the calculated, well planned scheme and design to place obstacles for this appellant so as to defeat any appeal upon review in this bankruptcy litigation to appellant and so as to dismember the overall conspiracy and fraud perpetrated upon the supersedeas appeal bonds and additional supersedeas appeal bonds of the said bankrupt, EDWARD JOHN KAZUBOWSKI, and awards of money upon created and false claims under the said supersedeas appeal bonds and additional supersedeas appeal bonds of the said bankrupt, and against public policy and morals;

35. The "GAME" played with appellant by this Court is revealed by this Court's sua sponte decision wherein the sua sponte decision states that appellant WAS NOT AFFORDED A "HEARING before the District Court -- while ironically, NEITHER WILL THIS COURT AFFORD APPEALLANT A "HEARING";

35. The sua sponte decision denies and deprives appellant of all rights to participate in the judicial system, and is but a part of the continuing scheme and design to defeat and obstruct any "hearing" or any review whatever, to this appellant in this Court or in the said District Court or in the said Bankruptcy Court, and in arbitrary and capricious violations of procedural due process of law secured by the Due Process Clause of the Fifth Amendment to the United States Constitution, and of an Act of Congress relating to Bankruptcy, and of Rules of the

Federal Rules of Appellate Procedure ;

36. This Court by entering the sua sponte decision serves as an accomplice in the wilful transgressions of the Supremacy Clause, Article VI, Clause 2 of the United States Constitution with intent to defeat the Bankruptcy Law and which provisions of the Bankruptcy Act set forth upon appeal have been arbitrary and capriciously defeated by the sua sponte decision entered by this Court;

WHEREFORE, respondent-appellant herein moves the Court to vacate the sua sponte decision shown entered on September 20, 1973 in this appeal No. 72-1800, denying appellant equal access to the Court, denying and depriving appellant of First and Fifth Amendment Federal Constitutional rights and which said sua sponte decision is tainted with fraud pursuant to the calculated, well planned scheme to defeat, impair and obstruct justice, and entered by abnegation of judicial duty with a refusal to exercise judicial function under an Act of Congress relating to Bankruptcy and under the Federal Rules of Appellate Procedure and under the Due Process Clause of the Fifth Amendment to the United States Constitution, so as to serve as accomplices in the wilful transgressions of the Laws of the United States and so as to leave the bankruptcy litigation in a posture more perplexed and in a manner far more evil than before perferfecting the appeal; and,

Appellant further moves this Court to set this cause for immediate hearing upon appeal and that notice be given appellant pursuant to Rule 34 of the Federal Rules of Appellate Procedure.

ANNA A. PHELPS
Respondent-Appellant, Pro Se
R.F.D. #4, South Euclid Avenue
Princeton, Illinois 61356

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

September 20, 1973

Before

Hon. Roger J. Kiley, Circuit Judge.

Hon. Thomas E. Fairchild, Circuit Judge.

Hon. Walter J. Cummings, Circuit Judge.

In the matter of EDWARD JOHN KAZUBOWSKI, Bankrupt.

STEVEN J. COVEY, Referee in Bankruptcy, Petitioner-Appellee,	Appeals from the United States District Court for the Southern District of Illinois, Northern Division.
No. 72-1800 vs.	
ANNA A. PHELPS, Attorney at Law, Respondent-Appellant.	Nos. P-Bk-71-782, P-Civ-72-60
ANNA V. PHELPS, Plaintiff-Appellant,	Robert D. Morgan, Judge.
No. 73-1183 vs.	
HONORABLE STEPHEN J. COVEY, Referee in Bankruptcy, Defendant-Appellee.	

*In these appeals, briefs have been filed by appellant, but not by appellee. Pursuant to Rule 2, F.R.App.P, the court has reached decision herein on the record and briefs, without oral argument.

In No. 72-1800, appellant Phelps, an attorney, appeals from an order of the district court striking her name from the roll of attorneys and disbarring her from practice before the court.

Appellee Covey, a referee in bankruptcy, began these

FPI 81—8-2-70 108 5163

EXHIBIT "A"

disciplinary proceedings" as an adjunct to the proceedings in the pending ankruptcy case concerning appellant's brother, whose counsel she was. n his own motion, appellee issued an order to appellant to show cause hy she should not be disbarred for violation of a local bankruptcy ule which forbids an attorney to represent both a bankrupt and one of is creditors in the same case. After a "hearing" before himself, ppellee filed a petition in the district court seeking appellant's isbarment. Appellant filed a response denying violation of the Rule, ut also asserting justification. Without a hearing, the district ourt granted the petition. We reverse.

Our recent cases in this area make clear that a district ourt cannot disbar or suspend an attorney until it has afforded ubstantial due process in the form of procedural safeguards in the isciplinary proceedings against that attorney. In re Ming, 469 F.2d 352 (7th Cir. 1972); In re Echeles, 430 F.2d 347 (7th Cir. 1970). he opportunity to be heard is essential. Appellant was not afforded hat opportunity before the district court, and the proceeding was ot an adequate substitute.

"[D]isbarment and suspension proceedings are neither civil or criminal in nature but are special proceedings, sui generis, and esult from the inherent power of courts over their officiers. Such roceedings are not lawsuits between parties litigant but rather are in he nature of an inquest or inquiry as to the conduct of the respon- ent." In re Echeles, 430 F.2d 347, 349 (7th Cir. 1970).

In No. 73-1183, appellant Phelps appeals from the dismissal f her action against Referee Covey. She sought relief in the nature f mandamus to compel the referee to perform certain acts, allegedly equired of him by the General Orders in Bankruptcy, to facilitate a eview of his decision in the disciplinary proceeding against her. t sufficiently appears that this proceeding before the referee cul- inated in his petition in the district court, and that no independent isbarment or suspension order by the referee arose from it. Thus here was no order by the referee appropriate for review. The decision o dismiss was correct.

The clerk of this court is directed to enter judgment in o. 72-1800 reversing the judgment appealed from and remanding the ause for further proceedings; and in No. 73-1183 affirming the udgment appealed from. No costs are allowed to either party in ither case.

AFFIDAVIT IN SUPPORT OF MOTION TO VACATE SUA SPONTE DECISION IN APPEAL NO. 72-1800, SHOWN ENTERED ON SEPTEMBER 20, 1973, DENYING APPELLANT EQUAL ACCESS TO THE COURT, DENYING AND DEPRIVING APPELLANT OF FIRST AND FIFTH AMENDMENT FEDERAL CONSTITUTIONAL RIGHTS, TAINTED WITH FRAUD PURSUANT TO THE CALCULATED, WELL PLANNED SCHEME TO DEFEAT, IMPAIR AND OBSTRUCT JUSTICE AND WITH REFUSAL TO EXERCISE JUDICIAL FUNCTION WITH ABNEGATION OF JUDICIAL DUTY UNDER AN ACT OF CONGRESS RELATING TO BANKRUPTCY.

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

ANNA A. PHELPS, being first duly sworn on oath deposes and says that she is the respondent-appellant in Appeal No. 72-1800 pending in the United States Court of Appeals For the Seventh Circuit;

Affiant further says she is a sister to EDWARD JOHN KAZUBOWSKI, the bankrupt in No. P-BK-71-782, pending in the United States District Court For the Southern District of Illinois, Northern Division, In Bankruptcy, entitled: "In the Matter of EDWARD JOHN KAZUBOWSKI, Bankrupt";

Affiant further says that she adopts and incorporates herein all of her allegations in the said Motion to Vacate the sua sponte decision shown entered on September 20, 1973 concerning said Appeal No. 72-1800;

Affiant further says that the summary disbarment of this affiant by the sua sponte order entered in camera by the said District Judge, ROBERT D. MORGAN, on July 24, 1972 was pursuant to the joint and concerted acts of the said District Judge, ROBERT D. MORGAN and of the said REFEREE IN BANKRUPTCY, STEPHEN J. COVEY, the petitioner-appellee in said appeal No. 72-1800, so as to detract from the real issues presented in affiant's timely petition for review filed on May 30, 1972, from the sua sponte order entered on May 15, 1972 by the said REFEREE IN BANKRUPTCY, and from the oral orders and findings of the said REFEREE IN BANKRUPTCY, STEPHEN J. COVEY, on May 19, 1972 after hearing had before the said REFEREE, STEPHEN J. COVEY;

EXHIBIT "B"

Affiant further says that the sua sponte decision shown entered on September 20, 1973 leaves the bankruptcy litigation and procedural aspects of the proceedings in this bankruptcy litigation in a posture far more frustrated and in a posture far more evil than before the appeal had been perfected;

Affiant further says that there has been a complete denial of all relief to her upon this appeal and in the prior original actions commenced in the said Court of Appeals for writ of mandamus and/or prohibition directed to the said District Judge;

Affiant further says the effect of all the fraud and of the sua sponte decision is to grant unlimited, unbridled and arbitrary powers upon the said District Judge and upon the said Referee in Bankruptcy upon remandment of the cause, in that the issues not determined upon the merits upon this appeal are left for the determination of the said District Judge;

Affiant further says that ALL TWELVE ISSUES presented upon appeal for determination upon the merits by this Court of Appeals are capriciously and invidiously left for determination by the said District Judge, ROBERT D. MORGAN;

Affiant further says that she is of the opinion and belief that the Judges of the said Court of Appeals have pre-conceived opinions of personal bias and prejudice against this affiant so that a fair and impartial hearing and opinion cannot be had in this Cause No. 72-1800 in that fairness requires an absence of personal bias and prejudice.

Anna A. Phillips

Subscribed and sworn to before me

this 4th day of October, 1973.

Kelly Pannell

NOTARY PUBLIC

My Comm. Expires: 10/31/73

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NO. 72-1800

In the Matter of EDWARD JOHN KAZUBOWSKI, Bankrupt, (P-BK-71-782) STEPHEN J. COVEY, Referee in Bankruptcy, Petitioner-Appellee, vs. ANNA A. PHELPS, Attorney at Law, Respondent-Appellant.	Appeal from the United States District Court For the Southern District of Illinois, Northern Division Hon. ROBERT D. MORGAN Judge Presiding

U.S.C.A. - 7th Cir.
FILED
OCT 10 1973
THOMAS F. STRUG
CLERK

MOTION FOR STAY OF MANDATE PENDING FILING OF A PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Respondent, Anna A. Phelps, appellant in the above entitled appeal pro se, No. 72-1800, prays that an order be entered staying the mandate of the United States Court of Appeals For the Seventh Circuit, which will otherwise issue October 11, 1973, pending the filing of a petition for writ of certiorari to The Supreme Court of the United States pursuant to Rule 41 of the Federal Rules of Appellate Procedure and Circuit Rule 21 of the Rules of the Seventh Circuit, and respectfully shows as follows:

1. This appeal arises out of Bankruptcy proceedings presently pending in the United States District Court For the Southern District of Illinois, Northern Division, Case No. P-BK-71-782, In Bankruptcy, entitled: "In the Matter of EDWARD JOHN KAZUBOWSKI, Bankrupt";

2. That on September 20, 1973, a sua sponte decision was entered by this Court, denying appellant equal access to the Court, denying and depriving appellant of First and Fifth Amendment Federal Constitutional

rights and of "an opportunity" to be heard upon appeal, and, in effect, denying and depriving appellant of her right to a review upon appeal as provided by Statute and depriving appellant of procedural due process secured by the Due Process Clause of the Fifth Amendment to the United States Constitution, and without regard to an Act of Congress relating to Bankruptcy;

2. That appellant did not waive any right to oral argument or to appear pro se in this cause by reason of the refusal and failure of the Referee-Appellee to file an appellee's brief;

3. That none of the twelve issues presented upon appeal, including the unconstitutionality of Rule 21 of the Rules in Bankruptcy For the United States District Court For the Southern District of Illinois, have been determined and the effect of which disregard of the Bankruptcy Act and of the sua sponte decision entered by this Court on September 20, 1973, confers unlimited, arbitrary and unbridled powers upon the said District Judge upon the filing of the mandate of this Court not otherwise conferred upon the Bankruptcy Courts or District Courts or under the Bankruptcy Act;

4. That upon the filing of the mandate in the said District Court, the said District Judge is free to make determinations upon the issues not determined by this Court and, therefore, the said District Judge will make determinations of/the all issues raised and presented upon appeal and for determination by this Court after hearing had in this cause, or, ignore said issues;

5. By the sua sponte decision entered by this Court upon the sua sponte order of the said District Judge, the bankruptcy litigation is left in a posture far more evil than before perfecting the appeal;

6. That appellant has been denied and deprived of, inter alia, procedural due process of law secured by the Due Process Clause of the Fifth Amendment to the United States Constitution, and of property rights secured by the Due Process Clause of the Fifth Amendment to the United States Constitution, and has been

summarily disbarred by the caprice and whims of the said District Judge by arbitrary denial to the equal access to the said District Court so as to condition the practice of law of this appellant and so as to deprive the said Bankrupt of counsel and so as to prevent unearthing of the fraud and conspira upon the supersedeas appeal bonds and additional supersedeas appeal bonds of the said bankrupt, Edward John Kazubowski, carried into the bankruptcy proceedings by Attorney Charles A. Covey and brother of the said REFEREE IN BANKRUPT STEPHEN J. COVEY;

7. That appellant's right to file a Petition for rehearing pursuant to Rule 40 of the Federal Rules of Appellate Procedure was deliberately defeat impaired and obstructed by the sua sponte decision entered by this Court on Sepatember 20, 1973, in that "no hearing" was afforded to appellant;

8. The original and twenty-four (24) copies of the Motion to vacate filed October 4, 1973
the sua sponte decision shown entered on September 20, 1973 in this cause does not stay the mandate as would the filing of a timely petition for rehearing;

10. The sua sponte decision is, nonetheless, in direct conflict with several opinions rendered by this Court as set forth in the said Motion to va the said sua sponte decision;

11. That appellant is of the opinion and belief that this Court will totally disregard the said Motion to vacate the sua sponte decision or deny the said Motion;

12. Appellant is of the opinion and belief that this Court has a personal prejudice and bias against this appellant so as to defeat, impair and obstruct any review upon appeal of this appellant and so as to defeat any opportunity to appellant, whatever, to participate in the judicial syste

That appellant's opinion and belief is further established by the denials of the original actions commenced in this Court for writ of mandamus directed to the said District Judge to exercise judicial function under an Act of Congress relating to Bankruptcy and more particularly the sections of the Bankruptcy Act therein set forth and complained of by this appellant;

In addition, appellant is of the opinion and belief that the original action commenced May 25, 1973 for a writ of mandamus directed to the said District Judge to exercise judicial function and judicial duty imposed upon him pursuant to the Rules promulgated by The Supreme Court, and more specifically, pursuant to Rule 52(a) of the Federal Rules of Civil Procedure and to set forth the oral announcements and findings on May 2, 1973 upon separate documents, is pursuant to a scheme and design to defeat three other appeals of this appellant, in that the said petition for writ of mandamus is being withheld by this Court;

13. That Section 1254(1) of Title 28, U.S.C. provides:

> "Cases in the Courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree:"

14. That the time provided for the petition for writ of certiorari to the Supreme Court of The United States is ninety days pursuant to Title 28 U.S.C. §2101(c):

> ". . .any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A Justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

15. That as directed by the United States Statutes and pursuant to

Rule 41(b) of the Federal Rules of Appellate Procedure and Circuit Rule 21 of the Rules of the Seventh Circuit, appellant makes application to this Court that its mandate be stayed,(or recalled in the event this Court issued the mandate prior to the 21 days of the entry of the sua sponte decision) for a period of 30 days and extension thereof for cause shown until the time for appellant to make application for writ of certiorari has expired or until such date as proceedings in the Supreme Court of the United States have been finally adjudicated;

16. That unless the mandate is stayed pending the application for a writ of certiorari to the Supreme Court of the United States, appellant will be subjected and caused to be subjected to further summary disbarment at the pleasure and caprice of the said district judge and of the REFEREE-APPELLEE as clearly established by the "NOTICE OF HEARING ON DISBARMENT OF ANNA A. PHELPS" shown entered on October 3, 1973, in the application of wholesale misuse and abuse of said local Rule 21, and the refusal of the said District Court to rule upon the issues of the unconstitutionality of said local rule and Section 39a(8), b and c of the Bankruptcy Act, 11 U.S.C. §67(a)(8), (b) and (c), and refusal of this Court to afford appellant equal access to the Court and "an opportunity to be heard" upon appeal, and with refusal of this Court to grant appellant the right to review upon appeal; a copy of the "NOTICE OF HEARING ON DISBARMENT OF ANNA A. PHELPS" is attached hereto as Exhibit "A";

17. That important issues concerning the public interest under an Act of Congress relating to Bankruptcy are involved in this bankruptcy litigation and left undetermined and thereby creating a further procedural "maze" by circumventing, evading and simply ignoring the jurisdiction conferred upon the said Bankruptcy Court, upon the said REFEREE-APPELLEE, and upon the District Court as clearly established by the sua sponte decision entered by this Court;

18. Appellant is of the opinion and belief that this Court has abnegated

judicial function and judicial duty under an Act of Congress relating to Bankruptcy to defeat, impair and obstruct appellant's right to a review upon appeal in that, inter alia, the said District Judge was a party co-conspirator in the scheme to extort $28,000.00 from the members of the family of EDWARD JOHN KAZUBOWSKI, including this appellant, prior to the filing of the petition of bankruptcy by Attorney Charles A. Covey and brother of the REFEREE-APPELLEE, STEPHEN J. COVEY, and which scheme for the extortion of $28,000.00 for the purchase of the liberty of the said EDWARD JOHN KAZUBOWSKI, now the bankrupt, was upon orders falsely procured against public policy and morals and upon orders falsely procured in violation and defiance of the supersedeas appeal bonds and additional supersedeas appeal bonds of the said EDWARD JOHN KAZUBOWSKI, and which said supersedeas appeal bonds and additional supersedeas appeal bonds served no benefit to the said EDWARD JOHN KAZUBOWSKI, but rather impoverished the said EDWARD JOHN KAZUBOWSKI;

19. The sua sponte decision, inter alia, circumvents, evades and simply ignores that portion of the sua sponte order of the said District Judge from which the appeal was taken and perfected, leaving the bankruptcy litigation in a far worse posture and in a manner far more evil than before perfecting the appeal;

20. This Motion to stay the mandate is not frivolous or filed merely for delay - but to the contrary this Court has subjected and caused to be subjected postponement of appellant's said appeal to preference of 49 cases docketed subsequent to said appeal No. 72-1800 and which said 49 cases docketed subsequent to appellant's said appeal No. 72-1800, this Court heard oral arguments during the April session, and, appellant's said appeal No. 72-1800 has been subjected and caused to be subjected to postponement and preference of an additional 86 cases docketed subsequent to appellant's said appeal No. 72-1800, and which said additional 86 cases were set for oral argument during the September session

by this Court; that appellant's said appeal No. 72-1800 has been subjected and caused to be subjected to postponement and preference of a total of 135 cases docketed subsequent to appellant's said appeal and in which total of 135 cases this Court set for oral arguments but denied appellant equal access to the Court and denied and deprived appellant of an "opportunity to be heard" upon appeal;

21. Appellant is of the opinion and belief that the sua sponte decision entered upon the sua sponte order of the said District Judge is but a part of a calculated scheme and plan to continue to enter sua sponte decisions upon sua sponte orders of the said District Judge as more clearly established by the sua sponte decision of this Court in appellant's appeal No. 73-1183 and the appeal more recently docketed in this Court on October 4, 1973 being Case No. 73-1892, so as to create piece meal appeals but without a review upon appeal;

22. That the Affidavit of appellant is attached hereto as Exhibit "B" in support of this Motion;

WHEREFORE, appellant prays that the mandate of this Court in this cause be stayed and which mandate will/issue otherwise on October 11, 1973, pending the filing of a petition for writ of certiorari to the Supreme Court of The United States and that the mandate be stayed for a period of 30 days and extension thereof for cause shown until the time for appellant to make application for writ of certiorari has expired or until such date as proceedings in the Supreme Court of the United States have been finally adjudicated.

Respectfully submitted,

Anna A. Phelps

ANNA A. PHELPS, Respondent-Appellee
Pro Se
R.F.D. #4, South Euclid Avenue
Princeton, Illinois 61356

NOTICE OF ~~HEARING ON DISCHARGE OF~~ ANNA M. PHELPS D.C. Form No. 18 (Rev. Sept. 1953)

United States District Court

FOR THE

SOUTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION

IN THE MATTER OF
EDWARD JOHN KAZUBOWSKI,
v. Bankrupt

No. P-BK-71-782

TAKE NOTICE that the above-entitled case has been set for HEARING at U.S. Courtroom, Federal Bldg., Peoria, Ill., on WEDNESDAY, October 31, 19 73, at 10:30 A.M.

Date October 3, 19 73

William J. Littell
William J. Littell, Clerk.

~~By~~ Deputy Clerk.

To

Mr. Stephen J. Covey
Referee in Bankruptcy
Federal Bldg.
Peoria, Ill.

Mrs. Anna M. Phelps
R. R. # 4
Princeton, Illinois

EXHIBIT "A"

AFFIDAVIT IN SUPPORT OF MOTION FOR STAY OF MANDATE IN CASE NO. 72-1800 PENDING FILING OF A PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES.

STATE OF ILLINOIS)
COUNTY OF Cook) SS.

ANNA A. PHELPS, being first duly sworn on oath deposes and says she is the respondent-appellant in appeal No. 72-1800 in the United States Court of Appeals For the Seventh Circuit, entitled: "In the Matter of EDWARD JOHN KAZUKOWSKI, Bankrupt (NO. P-BK-71-782) STEPHEN J. COVEY, Referee in Bankruptcy, Petitioner-Appellee, vs. ANNA A. PHELPS, An Attorney at Law, Respondent-Appellant";

Affiant further says that she adopts and incorporates herein all of the allegations of her said Motion For Stay of Mandate Pending filing of a petition for writ of certiorari to the Supreme Court of The United States;

Affiant further says that she is of the opinion and belief that the Judges of this Court of Appeals have pre-conceived opinions of personal bias and prejudice against this affiant so that a fair and impartial hearing and opinion may not be had in this cause No. 72-1800 in that fairness requires an absence of personal bias and prejudice;

Affiant further says that there has been a complete denial of all relief to her upon this appeal and in the prior original actions commenced in this Court of Appeals for writ of mandamus and/or prohibition directed to the said District Judge, ROBERT D. MORGAN;

Affiant further says that all of the issues presented upon appeal for hearing and determination upon the merits by this Court of Appeals and not determined by this Court upon "hearing" as provided by Statute and the Due Process Clause of the Fifth Amendment to the United States Constitution, are capriciously and arbitrarily left for determination by the said District Judge

EXHIBIT "B"

upon issuing the mandate and leaves the bankruptcy litigation in a posture far worse and in a manner far more evil than before perfecting the appeal;

Affiant further says that the sua sponte decision shown entered on September 20, 1973 by this Court creates another obstacle for this affiant and creates a further procedural "maze" in this bankruptcy proceedings so as to detract from the real issues presented under an Act of Congress relating to Bankruptcy;

Affiant is of the opinion and belief that the said sua sponte decision entered by this Court on September 20, 1973 was calculated so as to suppress the corrupt administering and procuring of the continued corrupt administering of an Act of Congress relating to Bankruptcy in this Bankruptcy Estate.

Affiant further says she did not file any motion for consolidation of appeals.

Anna A. Phelps

Subscribed and sworn to before me
this 16th day of October, 1973.

NOTARY PUBLIC

My Comm. Expires: 10/31/73

APPENDIX G

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

October 16, 19 73.

Before

Hon. THOMAS E. FAIRCHILD, Circuit Judge

Hon. _____

Hon. _____

In the matter of:
EDWARD JOHN KAZUBOWSKI,
STEVEN J. COVY, Referee in Bankruptcy,
Petitioner-Appellee,

No. 72-1800 vs.

ANNA A. PHELPS, Attorney at Law,
Respondent-Appellant.

Appeal from the United States District Court for the Southern District of Illinois, Northern Division.

(P BK 71 782)

This matter comes before the Court on the respondents-appellants "Motion For Stay Of Mandate Pending Filing Of A Petition For Writ Of Certiorari To The Supreme Court Of The United States" filed herein on October 10, 1973. On consideration whereof,

IT IS ORDERED that said motion of respondent-appellant for a stay of mandate be, and the same is hereby, denied.

APPENDIX H

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

OCTOBER 19, 1973

Before

Hon. ROGER J. KILEY, Circuit Judge

Hon. THOMAS E. FAIRCHILD, Circuit Judge

Hon. WALTER J. CUMMINGS, Circuit Judge

In the matter of:
EDWARD JOHN KAZUBOWSKI,
STEVEN J. COVEY, Referee in Bankruptcy,
Petitioner-Appellee,

No. 72-1800 vs.

ANNA A. PHELPS, Attorney at Law,
Respondent-Appellant.

Appeal from the United States District Court for the Southern District of Illinois, Northern Division.
(P BK 71 782)

On consideration of the petition for rehearing filed in the above-entitled cause,

IT IS HEREBY ORDERED that the petition for rehearing in the above-entitled appeal be and the same is hereby denied.

APPENDIX I

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution:

Article VI, Clause 2 (U.S.C.A. Const. Art. 6, cl. 2):

Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment I (U.S.C.A. Const. Amend. 1):

Congress shall make no law . . . or abridging the freedom of speech . . . or right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V (U.S.C.A. Const. Amend. 5) (Due Process of Law):

No person shall . . . nor be deprived of life, liberty, or property, without due process of law;

Amendment XIV (U.S.C.A. Const. Amend. 14):

Due Process of Law

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX J

STATUTES INVOLVED

UNITED STATES CODE

11 U.S.C.A. § 11 (Section 2 of the Bankruptcy Act):

Creation of courts of bankruptcy and their jurisdiction

(a) The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—

• • • • •

(17) Approve the appointment of trustees by creditors or appoint trustees when creditors fail so to do; and, upon complaints of creditors or upon their own motion, remove for cause receivers or trustees upon hearing after notice;

UNITED STATES CODE

11 U.S.C. §67 (Section 39 of the Bankruptcy Act):

Duties of Referees

a. Referees shall . . . (8) prepare promptly and transmit to the clerks certificates on petitions for review of orders made by them, together with a statement of the questions presented, the findings and orders thereon, the petition for review, a transcript of the evidence or a summary thereof, and all exhibits;"

• • •

c. A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court upon petition filed within such ten-day period may for cause shown allow, file with the referee a petition for review of such order by a judge

and serve a copy of such petition upon the adverse parties who were represented at the hearing. Such petition shall set forth the order complained of and the alleged errors in respect thereto. Unless the person aggrieved shall petition for a review of such order within such ten-day period, or any extension thereof, the order of the referee shall become final. Upon application of any party in interest, the execution or enforcement of the order complained of may be suspended by the court upon such terms as will protect the rights of all parties in interest. July 1, 1898, c. 541, § 39, 30 Stat. 555; June 22, 1938, c. 575, § 1, 52 Stat. 858; June 28, 1946, c. 512, § 5, 60 Stat. 326; July 7, 1952, c. 579, § 12, 66 Stat. 424; June 23, 1959. Pub.L. 86-49, 73 Stat. 80; July 14, 1960, Pub.L.86-662, 74 Stat. 528; May 10, 1966, Pub.L. 89-414, 880 Stat. 135.

11 U.S.C.A. §75 (Section 47 of the Bankruptcy Act):

Trustees; duties

(a) Trustees shall (1) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estates as expeditiously as is compatible with the best interests of the parties in interest; (2) deposit all money received by them in designated depositories initially in demand deposits; and subsequently, if authorized by the court, in interest-bearing savings deposits, time certificates of deposit, or time deposits-open account; (3) account for and pay over to the estates under their control all interests received by them upon funds belonging to such estate; (4) disburse money only by check or draft on such depositories; (5) keep records and accounts showing all amounts and items of property received and from what sources, all amounts expended and for what purposes and all items of property disposed of; (6) set apart the bankrupts' exemptions allowed by law, if claimed, and report the items and estimated value thereof to the courts as soon as practicable after their appointment; (7) examine the bankrupts (a) at the first meetings of creditors or at other meetings specially fixed for that purpose, unless they shall already have been fully examined by the referees, receivers, or creditors, and (b) upon the hearing of objections, if any, to their discharges, unless otherwise ordered by the court; (8) examine all proofs of claim and object to the allowance of such claims as may be improper; (9) oppose at the expense of estates the discharges of bankrupts when they deem it advisable to do so; (10) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (11) pay dividends within ten days after they are declared by the referees; (12) report to the courts in writing the condition of the estates, the amounts of money on hand, and such other details as may be required by the courts, within the first month after

their appointment and every two months thereafter, unless otherwise ordered by the courts; (13) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors: and (14) lay before the final meetings of the creditors detailed statements of the administration of the estates.

(b) Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

(c) The trustee shall, within ten days after his qualification, record a certified copy of the order approving his bond in the office where conveyances of real estate are recorded in every county where the bankrupt owns real property or an interest therein, not exempt from execution, and pay the fee for such filing. He shall receive a compensation of 50 cents for each copy so filed which, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the expenses of administration. July 1, 1898, c. 541, § 47, 30 Stat. 557; Feb. 5, 1903, c. 487, §10, 32 Stat. 799; June 25, 1910, c. 412, § 8, 36 Stat. 840; June 22, 1938, c. 575, § 1, 52 Stat. 860; May 8, 1963, Pub.L. 88-16, 77 Stat. 14.

11 U.S.C.A. § 110 (Section 70 of the Bankruptcy Act):

(f) The court shall appoint a competent and disinterested appraiser and upon cause shown may appoint additional appraisers, who shall appraise all the items of real and personal property belonging to the bankrupt estate and who shall prepare and file with the court their report thereof. Real and personal property shall, when practicable, be sold subject to the approval of the court. It shall not be sold otherwise than subject to the approval of the court for less than 75 per centum of its appraised value. Whenever a sale of real or personal property of a

bankrupt is made by or through an auctioneer employed by the court, receiver, or trustee, the auctioneer must be a duly licensed or authorized auctioneer in the place where the sale is to be conducted. As amended Sept. 25, 1962, Pub.L. 87-681, §§ 9, 10, 76 Stat. 571; July 5, 1966, Pub.L. 89-495, §5, 80 Stat. 269.

28 U.S.C.A. § 2075:

Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure under the Bankruptcy Act.

Such rules shall not abridge, enlarge, or modify any substantive right.

Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported.

All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. Added Pub.L. 88-623, § 1, Oct. 3, 1964, 78 Stat. 1001.

APPENDIX K

RULES INVOLVED

In The United States District Court For The Southern District Of Illinois, Rules In Bankruptcy:

Rule 21

CONFLICT OF INTEREST

An attorney who represents a creditor, either generally or on a specific case basis, may not represent a bankrupt who is indebted to said creditor.

ENTERED *August 26, 1965"*

Frederick O. Mercer, Chief Judge
Omer Poos, Judge

F.R.A.P. Rule 34, 28 U.S.C.A.:

Oral Argument

(a) *Notice of Argument; Postponement.* The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed reasonably in advance of the date fixed for hearing.

F.R.A.P. Rule 40, 28 U.S.C.A.:

Petition for Rehearing

(a) *Time for Filing; Content; Answer; Action by Court if Granted.* A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support

of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

Fed. Rules Civ. Proc. Rule 52, 28 U.S.C.A.:

Findings by the Court

(a) *Effect.* In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its actions. Requests for findings are not necessarily for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41 (b). As amended Jan. 21, 1963, eff. July 1, 1963.

GENERAL ORDERS IN BANKRUPTCY INVOLVED

Bankruptcy Gen. Order 17, 28 U.S.C.A.:

Duties of Trustee

(1) The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all of the property of the bankrupt or debtor that comes into his possession unless, prior thereto, a receiver or other officer has prepared such an inventory.

(2) The trustee shall make report to the court, within five days after receiving the notice of his appointment, unless further time is granted by the court, of the articles set off to the bankrupt or debtor by him, according to the provisions of section 47 of the Act, with the estimated value of each article; and any creditor or the bankrupt or debtor may file objections to the determination of the trustee within ten days after the filing of the report, unless further time is granted by the court.

(3) In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the Act or by these general orders, within five days after the same shall be due, it shall be the duty of the court to make an order requiring the trustee to show cause, at a time specified in the order, why he should not be removed from office. The court shall cause a copy of the order to be served upon the trustee at least three days before the time fixed for the hearing.

(4) All accounts of trustees and receivers shall be referred as of course to the referee for audit, unless otherwise specially ordered by the judge.

As amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939; Mar. 3, 1958.

APPENDIX M

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

In the Matter of	)	IN BANKRUPTCY
	)	
EDWARD JOHN KAZUBOWSKI,	)	NO. P BK 71 782
	)	
Bankrupt.	)	

FILED
at ... o'clock ... M
MAY 15 1972
... J. COVEY
... in Bankruptcy

ORDER

TO: MARGARET GILIO
3701 Sunset Lane
Franklin Park, Illinois 60131

Upon the request of STEPHEN J. COVEY, Referee in Bankruptcy, you are hereby ORDERED TO APPEAR before the above Referee in Bankruptcy, Room 329, United States Post Office Building, Peoria, Illinois, on the 19th day of May, 1972, at 2:30 P.M.

ENTERED at Peoria, Illinois, this 15th day of May, 1972.

/s/ STEPHEN J. COVEY
Referee in Bankruptcy

By /s/ Gloria J. Young, Clerk

APPENDIX N

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

In the Matter of	)	IN BANKRUPTCY
	)	
EDWARD JOHN KAZUBOWSKI,	)	NO. P BK 71 782
	)	
Bankrupt.	)	

FILED
at ____ o'clock ____ M
MAY 15 1972
STEPHEN J. COVEY
Referee in Bankruptcy

ORDER

TO: CLARENCE W. BOLING and
HELEN L. BOLING
516½ W. First St.
Kewanee, Illinois 61443

Upon the request of STEPHEN J. COVEY, Referee in Bankruptcy, you are hereby ORDERED TO APPEAR before the above Referee in Bankruptcy, Room 329, United States Post Office Building, Peoria, Illinois, on the 19th day of May, 1972, at 2:30 P.M.

ENTERED at Peoria, Illinois, this 15th day of May, 1972.

/s/ STEPHEN J. COVEY
Referee in Bankruptcy

By /s/ Gloria J. Young, Clerk

APPENDIX O

FILED
MAY 31 1972
WILLIAM J. GILLIS, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

In the Matter of	)	IN BANKRUPTCY
	)	
EDWARD JOHN KAZUBOWSKI,	)	NO. P BK 71 782
	)	
Bankrupt.	)	

I, STEPHEN J. COVEY, Referee in Bankruptcy in and for said District and Division, DO HEREBY CERTIFY the following documents:

1. Petitions for review filed by Margaret Gilio, Clarence W. Boling and Helen L. Boling May 8, 1972.
2. Petitions for removal of trustee filed by Margaret Gilio, Clarence W. Boling and Helen L. Boling May 8, 1972.
3. Applications of Margaret Gilio, Clarence W. Boling and Helen L. Boling, creditors, for Order staying or suspending further proceedings or hearings on the application of Betty Dolar, a/k/a Betty Dolar Kazubowski, Gregg A. Young, and Andrews & Andrews, pending petition for review for lack of filing proof of claim by said applicants, and for other relief filed May 8, 1972.
4. Affidavits of bias and prejudice re: petitions of creditors for review filed by Margaret Gilio, Clarence W. Boling, and Helen L. Boling May 8, 1972.
5. Affidavits of mailing petitions for review and applications for order to stay or suspend further proceedings or hearings pending petitions for review filed by Margaret Gilio and Clarence W. Boling May 8, 1972.

6. Notices of filing petitions for review and applications for order to say or suspend further proceedings or hearings pending petitions for review filed by Margaret Gilio, Clarence W. Boling and Helen L. Boling May 8, 1972.

7. Order to Show Cause entered May 15, 1972.

8. Response filed by Anna A. Phelps to Order to Show Cause May 19, 1972.

9. Transcript of testimony.

10. Petition for review filed by Anna A. Phelps May 30, 1972.

11. Affidavit of Bias and Prejudice re: Petition for review of Anna A. Kazubowski Phelps filed May 30, 1972.

12. Petition of Referee.

Respectfully submitted.

/s/ STEPHEN J. COVEY
Referee in Bankruptcy

APPENDIX P

NCE OF HEARING ON DISBARMENT OF ANNA A. PHELPS D. C. Form No. 18 (Rev. Sept. 1953)

United States District Court

FOR THE

SOUTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION

IN THE MATTER OF
EDWARD JOHN KAZUBOWSKI,
v. Bankrupt

No. P-BK-71-782

TAKE NOTICE that the above-entitled case has been set for HEARING at U.S. Courtroom Federal Bldg. Peoria, Ill., on WEDNESDAY, October 31, 1973, at 10:30 A.M.

Date October 3, 1973

/s/ William J. Littell, *Clerk.*

To

Mr. Stephen J. Covey
Referee in Bankruptcy
Federal Bldg.
Peoria, Ill.

Mrs. Anna M. Phelps
R. R. # 4
Princeton, Illinois